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Report on the human rights situation in Haiti prepared by Marco Tulio Bruni Celli, Independent Expert, in accordance with Commission on Human Rights resolution 1991/77

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INTRODUCTION

A. Mandate of the Expert

1. At its forty-seventh session, the Commission on Human Rights considered the report of the Expert (E/CN.4/1991/33 and Add.1) and adopted without a vote resolution 1991/77, entitled "Situation of human rights in Haiti". The relevant paragraphs of this resolution are reproduced below:

> "Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,
>
> Reaffirming that the Governments of all Member States are required to promote and protect human rights and fundamental freedoms,
>
> Taking account of the report of the independent Expert appointed by the Secretary-General, Mr. Philippe Texier (E/CN.4/1991/33 and Add.1),
>
> 1. Expresses its appreciation to the independent Expert for his report and for the way in which he has discharged his mandate;
>
> 2. Takes note with satisfaction of the cooperation extended by the Haitian authorities to the independent Expert during his visits to Haiti from 27 June to 5 July 1990 and from 25 January to 2 February 1991;
>
> 3. Expresses its satisfaction at the democratic electoral process in Haiti on 16 December 1990 and on 20 January 1991, which has enabled a constitutional government to take office, and also at the full restoration of the 1987 Constitution;
>
> 4. Notes with satisfaction Haiti's accession to the International Covenant on Civil and Political Rights and invites the Government of Haiti to continue the process of ratifying other international human rights instruments;
>
> 5. Expresses its concern, however, that threats continue to loom over democracy and over full respect for human rights, as is borne out by the massacre perpetrated at Gervet on 17 January 1991;
>
> 6. Invites the Government of Haiti to expedite the investigation into the principal massacres, particularly those of 29 November 1987, 11 September 1988, 12 March 1990, 16 March 1990, 31 May 1990, 21 June 1990 and 17 January 1991, and to bring those responsible to trial;
>
> 7. Expresses its concern at the acts of violence committed in Haiti's rural areas and at the ineffectiveness of the judicial system, and invites the Government of Haiti to take all the necessary steps so that those responsible be tried in keeping with the law and not be subjected to acts of uncontrolled vengeance;

8. Expresses is conviction that, as noted by the independent Expert in his report, it is important to pursue a fruitful dialogue with the new Government of Haiti, with a view to constantly improving the human rights situation in Haiti;

9. Requests its Chairman to appoint an independent expert to examine developments in the human rights situation in Haiti and to help devise measures capable of making the necessary improvements;

10. Calls upon the Haitian authorities to continue to cooperate fully with the independent Expert;

11. Requests the Secretary-General to provide the independent Expert with all necessary assistance in performing his task;

12. Requests the independent Expert to report on the discharge of his mandate to the Commission at its forty-eighth session;

13. Decides to consider the report of the independent Expert at its forty-eighth session under the agenda item 'Advisory services in the field of human rights'."

2. In the wake of the events of 29 September 1991, the United Nations General Assembly kept abreast of the situation of human rights in Haiti and adopted resolutions 46/7 of 11 October and 46/138 of 17 December. In those resolutions, in particular, it strongly condemned the coup d'état, use of force and violations of human rights; demanded the restoration of the legitimate Government, the full application of the Constitution and the full observance of human rights and invited the independent Expert to include in his report to the Commission on Human Rights information on the events of 29 September 1991 and subsequent developments. This is the general framework and background to this report. The Expert was guided by the recommendations contained in the above resolution in making his visit to Haiti from 2 to 6 September 1991.

B. Earlier work by independent experts

3. The reports on the human rights situation in Haiti that were considered during the period 1981-1986 were summarized in a report by the Commission's Special Representative submitted at the forty-third session, in 1987 (E/CN.4/1987/61, paras. 1-5). In addition to summaries of the earlier reports, that report examined the activities conducted under the mandate assigned by the Commission, then gave a summary of Haiti's economic and social situation, described the country's efforts to obtain international aid and dealt with further developments in civil and political rights. Lastly, the Special Representative deemed it useful to provide a brief description of Haiti's experience in the constitutional, legislative, judicial and administrative areas.

4. From 1988 to 1991, the Commission on Human Rights endeavoured to pursue a dialogue with the representatives of the Government of Haiti in the hope of encouraging improvements in the situation of human rights and fundamental freedoms in that country. The Commission adopted various decisions to that

effect and also decided to designate an independent expert to represent it and submit a report on the fulfilment of his mandate. In accordance with the provisions of those resolutions, the Commission received reports on the human rights situation in Haiti prepared in 1988, 1989, 1990 and 1991. The reports examined the development of the general situation in Haiti, especially the political instability that had prevailed since the end of the Duvalier regime in 1986, the difficulties in establishing democratic institutions and making them work and the legal framework in regard to human rights. They contained allegations of arbitrary suspension and suppression of basic civil rights, especially freedom of expression, opinion, the press, assembly and the right to form trade unions. The reports also dealt with frequent cases of detention without charge, denial of due process and lack of observance of judicial guarantees and of the independence of the judiciary. They also analysed cases of violence in urban and rural areas and the origin, development and scope of the land ownership disputes.

5. Nearly all the reports spoke of deplorable conditions in the prisons, food and medical care were very poor and proper sanitary services were lacking and where, in addition, detainees were tortured; many of them died as a result of prison conditions and such ill-treatment. It was also stated that the Haitian people were systematically denied their political rights, especially the possibility of organizing and participating freely in election campaigns. It was alleged that general elections were anything but democratic and could even be called fraudulent (the reference is obviously to presidential and general elections prior to those of 16 December 1990 and 20 January 1991).

6. It is apparent from these reports that the economic and social situation has not improved in recent years and that extreme poverty has increased rather than decreased. The urban areas lack electricity and drinking water; malnutrition affects a high percentage of the population, infectious diseases wreak havoc, and over 80 per cent of the population is illiterate. The situation is even more serious in the rural areas, where over two thirds of the Haitian population live. The unemployment and underemployment rates are alarming. More recently, urban crime has increased.

7. The latest report, submitted to the Commission at its forty-seventh session (E/CN.4/1991/33 and Add.1), thoroughly examined the democratic elections of December 1990 and January 1991, held with technical assistance from the United Nations and the Organization of American States (OAS). Those international organizations, like other non-governmental institutions, monitored the electoral process and were able to attest to its relative honesty.

C. Appointment of Marco Tulio Bruni Celli as independent Expert

8. On 3 May 1991, the Chairman at the forty-seventh session of the Commission on Human Rights, Mr. Enrique Bernales Ballesteros, appointed Marco Tulio Bruni Celli of Venezuela independent Expert to discharge the mandate set out in Commission resolution 1991/77. In a letter dated 6 May 1991, the Centre for Human Rights informed Mr. Bruni Celli that he had been appointed the independent Expert to examine developments in the human rights situation in Haiti. In a letter dated 13 May, Mr. Bruni Celli accepted with pleasure his appointment and the opportunity to fulfil the mission

assigned to him. In a note verbale dated 24 June 1991, the Centre for Human Rights informed the Government of Haiti that Mr. Bruni Celli had been appointed the Commission's independent Expert to examine developments in the human rights situation in Haiti and participate in the elaboration of measures to help improve it.

D. First activities conducted under the mandate

9. The Centre for Human Rights informed the Expert that his mandate included a visit to Geneva to hold consultations with the Centre and organize and prepare the work assigned to him. In agreement with the Expert, the dates 24-30 August 1991 were set for the consultation mission. The Centre, for its part, prepared a programme of talks with Centre officials. In addition to talks with the Under-Secretary-General for Human Rights and the Chief of the Special Procedures Section, the Expert also met with Jeannot Hilaire, Consular Affairs Officer of the Mission of Haiti to the United Nations Office at Geneva; with the Director and Deputy Director of the Division of External Relations of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Deputy Director of UNHCR's Division of International Protection, the Deputy Director of UNHCR's Regional Bureau for Latin America and the Caribbean; the Director of the European Office of the United Nations Development Programme (UNDP); the Head of the Latin American Office of the International Committee of the Red Cross (ICRC) and Christian Nils Robert, Professor at the Faculty of Law of the University of Geneva. The Expert also talked with representatives of some non-governmental organizations: María Martín, Amnesty International adviser for Haitian affairs; Jacques Vittori and Charles Ridoré, of the Pax Christi International Catholic Peace Movement; and Adama Dieng, Secretary-General, and Alejandro Artucio, Legal Adviser, of the International Commission of Jurists.

10. In its note verbale of 24 June 1991, the Centre for Human Rights informed the Government of Haiti that, Mr. Bruni Celli wished to visit the country from 26 August to 3 September in fulfilment of his mission and that the authorities' approval was requested. Through the Permanent Mission to the United Nations Office at Geneva, the Minister for Foreign Affairs of Haiti replied on 23 July 1991 that the Government of Haiti was perfectly willing for Mr. Bruni Celli to carry out his mission shortly; however, the Haitian Ministry of Foreign Affairs requested postponement of the visit for a few days, until after 3 September. In a note verbale dated 25 July, the Centre replied that the Expert agreed to travel to Haiti on the date suggested by the Government, to establish direct contacts and fulfil his mandate. The Expert intended to conduct his visit to Haiti from 2 to 10 September 1991, accompanied by a Centre for Human Rights official. In a note verbale dated 19 August 1991, the Permanent Mission of Haiti confirmed the fact that the Haitian Government looked forward to the Expert's mission on the agreed date.

11. The Expert visited Haiti as planned, accompanied by a Centre for Human Rights official, from 2 to 6 September 1991. He established contacts with the political, administrative and Church authorities, the diplomatic corps, political leaders and directors of non-governmental organizations, observed the latest developments and the functioning of the institutions and assessed the human rights situation from the beginning of the year.

12. As regards contacts at the government level, the Expert held joint working meetings with several members of the Executive Cabinet: the Minister for Foreign Affairs and Worship, Ms. Denise Fabien Jean-Louis; the Minister of Justice, Mr. Karl Auguste; the Minister for Social Affairs, Ms. Myrta Célestin Saurel, and the Minister of the Interior, Mr. René Prosper. The Expert also met with the mayor of Port-au-Prince, Mr. Evans Paul; the President of the Senate, Mr. Déjean Bélizaire, and the President of the Chamber of Deputies, Mr. Duly Brutus; all of the members of the Human Rights Commission of the Senate; some of the members of the Justice Commission of the Chamber of Deputies; the President of the Court of Cassation, Mr. André Cherilus; and the Commander-in-Chief of the Armed Forces, General Raoul Cédras.

13. The Expert also met representatives of the Church: members of the Justice and Peace Commission, Reverend Father Freud Jean and Mr. Necker Dessables, and Pastor Sem Marseille, of the Protestant Church.

14. He also met several accredited diplomatic representatives in Haiti, including Raul Tardif, Director General, and Roland Roy, Deputy Director, of the Organization of American States (OAS) office in Haiti; Volker Heinsberg, Ambassador of Germany; Bernard Dussault, Ambassador of Canada; Monsignor Lorenzo Baldisseri, Chargé d'Affaires of the Apostolic Nuncio; José del Carmen Acosta Carrasco, Ambassador of the Dominican Republic; Raphael Dufour, Ambassador of France; Leslie M. Alexander, Chargé d'Affaires and Bill Holley, Political Adviser, of the Embassy of the United States of America; Sergio Romero, Ambassador of Mexico; Luis Larrain Cruz, Ambassador of Chile; Guy Mendes Penheiro, Ambassador of Brazil; Elmer Schialer Figueroa, Ambassador of Peru; and the Chargés d'Affaires of Panama and Venezuela.

15. The Expert also met politicians and party leaders: Gerard Jean-Charles, of the Lavalas Organization; François Benoit and Tony Verdier, of the Movement for the Establishment of Democracy in Haiti (MIDH); Arnold Antonin, of the Haitian Progressive Revolutionary Nationalist Party (PANPRA); Max Pean, Jean-André Victor and Henri Piquion, of the 28 November National Patriotic Movement (MNP28); Sylvio Claude, of the Christian Democrat Party (PDCH); and Jean-Baptiste Chavannes, of the Papaye Peasant Movement (MPP).

16. The Expert received information from a non-governmental organization for the protection and promotion of human rights, the Haitian Centre for the Defence of Human Rights and Political Freedoms (CHADEL), headed at the time by Jean-Jacques Honorat.

17. On 6 September, the Expert visited the national prison at Port-au-Prince and Saint-Marc prison. He was accompanied on his visit to the national prison by Mr. Raoul Elizé, Officer-in-Charge of Prison Administration in the Ministry of Justice. On several different visits, the Expert met with prison directors and prisoners and was also able to visit the maximum security cells, where he talked with Mr. Roger Lafontant and others convicted of offences against State security. The Expert was able to observe the physical conditions in the prisons.

18. The Expert held private talks in his hotel with close relatives of some of the political prisoners. Lastly, he met with some journalists during the press conference he called at the end of his visit.

19. In addition to the information received during his visit, the Expert read and studied many documents from governmental and non-governmental sources which he received during the year, from Port-au-Prince, New York, Washington and Geneva. He was also able to meet in the course of the year with leading Haitian figures or figures connected with the situation in Haiti, such as President Jean-Bertrand Aristide, the Venezuelan Ambassador to Haiti, Elsa Bocheciampe, Haitian senators and deputies, and members of the Inter-American Commission on Human Rights. Such information and meetings threw light on the human rights situation in Haiti and cleared up many political, economic, social and cultural matters.

20. Thus he was able to draw his first conclusions from the visits he made to Geneva and Haiti. The Expert considers the meetings he held in both places to have been worthwhile. He is satisfied at having received a broad range of useful information and documentation. He had informed the Haitian authorities in due course, before the coup d'état of 29 September, that it was gratifying that the Government had shown a readiness to reorganize the judiciary and the prison system and that it had submitted to Congress a bill separating the armed forces and the police. He also noted with satisfaction various achievements and announcements made by President Aristide's Government in the field of human rights: ratification of international human rights agreements; establishment of a Human Rights Commission of the Senate and a Sub-Commission on Human Rights in the Justice Commission of the Chamber of Deputies and the establishment of a special commission to investigate and clear up the events surrounding the principal massacres, especially those of 29 November 1987, 11 September 1988, 12 March 1990, 31 May 1990, 21 June 1990 and 17 January 1991.

21. At his press conference at Port-au-Prince and in the talks he held in Haiti, he confirmed the fact that, according to the information available at the time, despite efforts by President Aristide's Government during its seven months in power, much remained to be done effectively to improve human rights in Haiti. The Expert's visit made him aware of many difficulties impeding the process of improving human rights, such as an ineffective judiciary; a prison system dependent on the armed forces; confusion between the armed forces and the police; land ownership problems; the persistence at the practical level of old structures such as the section chief; the force of inertia; economic, social and cultural difficulties; a traditionally violent culture; intolerance; lack of experience with democracy and the conflict between the different branches of State and between the various institutions themselves.

22. Following the 29 September coup d'état ousting President Aristide, the Expert has been observing the human rights situation in Haiti closely. Since he is also a member of the Inter-American Commission on Human Rights, he visited Haiti together with other IACHR members and staff from 4 to 7 December 1991 and was able to evaluate on the spot the crucial aspects of events there. In Haiti he met with the Prime Minister of the de facto Government, Mr. Jean-Jacques Honorat; General Raoul Cedras and the seven colonels who make up the military high command; the leaders of the main

political parties; parliamentary leaders and some senators and deputies; the ministers and other high government officials under President Aristide, now in asylum in embassies or living clandestinely, including Prime Minister René Preval; representatives of human rights organizations; representatives of the written press and radio stations and representatives of trade unions, the churches and other vital institutions in Haiti. He also held talks with members of the OAS humanitarian mission. He heard direct testimony from victims and relatives of persons killed, wounded, tortured, persecuted, etc., since 29 September.

23. Again, in Washington, the headquarters of the Inter-American Commission on Human Rights, the Expert had the opportunity to receive information, exchange views and hold talks with the Secretary-General of OAS and some of the representatives of Latin American countries to that regional organization. He held several meetings with President Aristide, who is in Caracas awaiting progress in the political negotiations aimed at restoring the legitimate Government in Haiti.

II. THE COUNTRY IN GENERAL

A. Historical and political background

1. The colonial era

24. The Spanish colony founded by Christopher Columbus on the south-eastern part of the island of Santo Domingo experienced no changes or progress until the eighteenth century, while the French part of the island made enormous progress thanks to the fertility of the land and the importance of the metropolitan market. By 1798, trade with the island accounted for one third of French foreign trade and, in particular, three quarters of world sugar production. Such wealth was built on the backs of slaves imported in large numbers, especially after 1740 and even more so between 1784 and 1791, during which period, the annual average reached as many as 29,000 persons. By 1789, over two thirds of the 500,000 slaves had been born in Africa.

25. From 1789 to 1804, under the influence of the French Revolution, there was a breakdown in Santo Domingo's society (a society of castes: the mass of black slaves were at the bottom, followed by the groups of emancipated slaves, mulattos, poor whites and, at the top, the Creole aristocracy). After the factional fighting culminated in a series of violent changes in quick succession from 1789 to 1791 came the slave uprisings headed by Toussaint Louverture, Jean-Jaques Dessalines and Henri Christophe: Toussaint Louverture succeeded in freeing the slaves and repelling the Anglo-Spanish attacks; his generals, Dessalines and Christophe, defeated the French expeditionary force in 1804, proclaimed independence and declared themselves emperors. Santo Domingo then recovered its old name, Haiti.

2. The era of independence

26. After the assassination of Dessalines, whose dictatorship was rejected by the mulattos in particular (he was in power from 1804 to 1806), the Spanish recovered the eastern part of the island (1808), which was recognized by the 1814 Treaty of Paris. The western part (which now constitutes Haitian

territory) was the scene of intense internal struggles. In the north, the Black, Henri Christophe, first proclaimed an independent republic which later turned into a dictatorship; in the south, the mulatto, Alejandro Petion, formed a republic. Jean-Pierre Boyer, who succeeded Petion and governed from 1818 to 1843, reunited north and south in 1820 and conquered the eastern part of the island in 1822. The island remained unified from 1822 to 1844, when it was permanently divided into two separate States: the Republic of Haiti and the Dominican Republic.

27. After the division, internal problems began to recur in Haiti, the main feature being urban and rural violence; there were some civil wars. Then came the North American economic and financial penetration, which displaced French influence; North American predominance took root in a highly unstable political context: there were six presidents - three assassinated and three ousted - in succession. The prevailing anarchy was used as a pretext for United States intervention in 1914 and 1915. Later, after the American troops left in 1934, a new stage of political instability and military dictatorships began. From that time until 1957 there were a series of authoritarian regimes, revolutionary crises and military coups d'état.

3. Political evolution: from the Duvalier dictatorship to the democratic elections of December 1990 and January 1991

28. In 1957 François Duvalier was elected President and used the blacks as a power base against the mulatto aristocracy to impose his absolute rule upon the whole of society. Duvalier, who was nicknamed "Papa Doc" exalted Negritude, restored voodoo, came into conflict with the Church and undermined the authority of the army with the support of the "Tontons Macoutes" militia, Negroes recruited in the countryside and who possessed the authority, organization and resources to carry out repression and propaganda.

29. When he died in 1971, "Papa Doc" was succeeded by his son Jean-Claude Duvalier, who also took on the title of President for life and inherited a firmly established regime. "Baby Doc" Duvalier consolidated his authority, initiated an ambitious economic development programme with the support of foreign investors, and, at least at the beginning of his rule, to some extent he liberalized politics (he released most political prisoners, established relative freedom of the press, etc.). As from 1979, politics entered a period of conflict and crisis, even within the framework of the Duvalier system. Although he attempted to restore democracy, Jean-Claude Duvalier was not prepared to give up his position as Head of State for Life. A new period of repression began, during which the authorities alternated promises of greater democracy with persecution, arrests and censorship. Discontent increased among the various social groups, including the armed forces. Protest demonstrations, which began in November 1985, were organized by the grass-roots communities brought about his downfall. His flight to France on 7 February 1986 marked the end of a regime that had lasted 30 years (14 under François Duvalier and 16 under Jean-Claude Duvalier), which had proved incapable of renewing itself and which had lost all popular or institutional support.

30. After the fall of the Duvalier regime, a National Government Council, presided over by General Henry Namphy, (CNG) was established, whose proclaimed objective was to effect a successful transition to democracy. However, for various reasons this Provisional Government was extremely weak and lacked both domestic and foreign confidence. The CNG was accused of stagnating, of being tainted by the Duvalierist past, of having allowed and even facilitated the flight from Haiti of persons guilty of serious crimes against human rights, and so on. After the election of the Constitutent Assembly and the approval of the 1987 Constitution, following an initial failure to hold elections (which were suspended on account of the 29 November 1987 massacre), presidential and general elections were held on 17 January 1988. The elections, which were boycotted by many political parties and for which there was a minimum turnout, were won by Leslie Manigat, who was proclaimed President and took office on 7 February 1988.

31. A political crisis occurred on 17 June 1988 when President Manigat ordered the dismissal and retirement of General Namphy, whom he accused of having decided to transfer officers without consulting him. During the night of 19/20 June, a coup d'état took place: Manigat was exiled and Namphy returned to the Presidency. The coup d'état merely aggravated the social and political crisis: from that point onwards the number of complaints regarding disappearances, torture, arbitrary arrests, repression, etc., increased. The massacre on 10 September 1988 at the Church of Saint Jean Bosc in Port-au-Prince, in which many worshippers attending mass were killed, led to the fall of General Namphy and to the military coup of 17 December 1988 which brought General Prosper Avril to power. As a result of domestic and external pressure and of the climate of violence which set in at the beginning of 1990, General Avril, too, was forced to leave the country, on 10 March 1990. A new Provisional Government was then appointed.

32. The Provisional Government, headed by Mrs. Ertha Pascal Trouillot, a Court of Cassation judge, convened and organized presidential and general elections (with technical assistance from the United Nations, the Organization of American States and from friendly democratic Governments) which took place in a very tense political climate characterized by an ongoing conflict between the Executive and the Council of State, by the harsh criticism of the Government and of the Provisional Electoral Council by the political parties, and by the threat to the political process inherent in the presence in Haiti of Roger Lafontant and William Regala, whom political leaders suspected of being linked to the former regime and to the armed forces, and of being advocates of violence opposed to a democratic solution. In spite of the tension, it was possible to carry through the electoral time-table drawn up by the Provisional Electoral Council.

33. Finally, in a climate marked by a degree of political and social tension, the elections of 16 December 1990 and 20 January 1991 did take place and led to the victory of President Jean-Bertrand Aristide, to the establishment of a State ruled by law that received both national and international recognition, and to the establishment of a representative democracy. On 29 September 1991 a coup d'état overthrew President Aristide, who was forced into exile. The Congress "chose" a new President and also appointed Jean-Jacques Honorat as Prime Minister. General Raoul Cedras, the apparent leader of the coup d'état, remains in charge of the armed forces, and has kept real authority in his own hands.

B. Social and economic situation

34. In 1990, the population was approximately 6.5 million, living on 27,550 square kilometres (including the islands of Tortuga and Gonave). The rural population accounts for 72 per cent of the total, and the urban 28 per cent. In recent years there has been a considerable movement away from the countryside to towns. The rate of population growth was 1.5 per cent during 1960-1990. Demographic growth within so small a territory, together with economic stagnation, has caused considerable emigration. The migratory movement has taken various forms: domestic migration from the countryside to the towns (reversed since the events of 29 September 1991, because according to official statistics approximately 300,000 persons have returned to the countryside from Port-au-Prince; a diaspora throughout the world; and in recent years, especially since 29 September 1991, a clandestine exodus of boat people.

35. The Haitian diaspora currently comprises more than a million people whose temporary exile has gradually become final. Most of them live in the Dominican Republic, the United States of America and Canada. There are also large Haitian colonies in Cuba, the Bahamas, France, the French West Indies, Guyana, Venezuela and Mexico. The causes and consequences of Haitian emigration are manifold for it is a response to population pressure, to the inadequate living conditions and to the quest for work and for opportunities. In addition, emigration deprives the country of its meagre human resources and casts the family unit into disarray. Emigration currently accounts for a major share of foreign currency earnings through currency transfers. Lastly, emigration has provided a political safety valve and a means of fleeing political persecution and repression.

36. In the economic sphere, a relatively dynamic agricultural sector during 1989-1990 led to increased production both for domestic consumption and for export. Overall production of rice, maize, beans and bananas increased by 2.3 per cent. However, agricultural growth proved insufficient to meet local demand, and as a result the prices of agricultural produce rose. The rate of growth of export products was even lower, 3.3 per cent for coffee, 0.83 per cent for sugar cane and 0.2 per cent for cocoa.

37. Electricity production is very low. In 1986 only 10 per cent of the country's population had electricity, principally in Port-au-Prince, 45 per cent of whose inhabitants had electricity, compared with barely 3 per cent in the rest of the country. In this respect the figures have remained unchanged. Haitian industry has been marked by a lack of competitiveness in terms of both prices and quality. In-bond assembly has constantly declined since 1986, as a result of the fall of Duvalier. The causes of the decline include insecurity, wage claims, the absence of guarantees for investments against all kinds of risk, political uncertainty, violence and the relative decline in competitiveness in comparison with Haiti's Caribbean neighbours.

38. The import and export structure is that of an open economy. Imports of food products account for 25 per cent of total imports, fuel 21 per cent and manufactured goods and transport equipment 37 per cent. Agricultural exports, the foremost being coffee and cocoa, account for 33 per cent of total exports, and manufactured goods 67 per cent. Between 1985 and 1989, imports declined

by 24 per cent and exports by 29 per cent. The decline in trade was matched by a number of structural changes. Imports of manufactured goods fell by 43 per cent and those of transport equipment by 35 per cent on account of the lower level of activity in the assembly industry. Exports of the main agricultural products - coffee and cocoa - fell significantly by 46 per cent, and exports by small-scale industry dropped by 81 per cent.

39. As far as employment is concerned, data provided by OFATMA (Department of Industrial Accident, Sickness and Maternity Insurance) on wage-earners reveal a decline of approximately 2.1 per cent in the total number affiliated to the organization. There were apparently no substantial changes in the employment situation in provincial towns. A degree of stability was evident in virtually all of the sectors of activity considered. In Port-au-Prince, developments were almost entirely negative: wage claims, violence and social tension were advanced to account for mass lay-offs of workers and employees.

40. The overall rate of illiteracy in the country is 78 per cent and even 90 per cent in the rural areas, where most of the population lives. Haiti remains the country with the highest illiteracy rate in the region. The number of pupils in primary education increased by 7.41 per cent in comparison with 1988-1989, thereby bringing the average growth rate for the last five years to 8.53 per cent; the number of teachers also increased by 5.84 per cent. The situation is no better in secondary education: school enrolment is low; in the last two years, the number of private secondary schools has increased by 13.76 per cent, while the number of State schools remained the same. The number of pupils attending school increased in both the private and public sectors, by 8.0 and 7.8 per cent respectively.

41. The health situation remains critical. Health care institutions have never had even the ordinary material, human or financial resources. Hospitals are inadequate for a population of over 6 million and they are poorly equipped: they lack medicine, there is one bed for every 2,000 people, the equipment is old and run-down. In addition, hospitals and health centres are scattered in disorderly fashion throughout the country, with a heavy concentration in the west and particularly in the capital; the few hospitals and health centres in the other areas are also in the towns. As a result, the peasants, who account for 80 per cent of the population, receive virtually no medical care. There are 1.8 doctors for every 10,000 inhabitants, 0.8 dentists, 1.9 nurses and 3.6 nursing auxiliaries. Despite the health sector's inadequate material and human resources, the budget of the Ministry of Health provides only 50 per cent of the funds to pay the staff, cover operating expenses and the purchase of equipment: the difference is made up by private national and international organizations and by intergovernmental bodies.

42. The housing situation in Haiti is also critical. There are dozens of insalubrious slums throughout the country. Dwellings have no electricity, water, sewers and are in general run-down and unhealthy. There are insufficient resources to build low-cost housing. In addition, rents are relatively high, and there is no significant public or private investment in housing.

43. Social disparities are particularly striking. Unemployment affects almost 40 per cent of the country's active population; underemployment is endemic in the urban and in the rural areas. The difference is particularly marked between the masses who live in the most unbelievable poverty and the privileged, whose lifestyle appears excessively luxurious and lavish. These inequalities have worsened since the fall of the Duvalier dictatorship because of the constant deterioration in the economic situation, caused both by political instability and violence, which have driven off foreign investors and diminished the activity of firms, and by smuggling, which is traditional in Haiti and further enriches the powerful; recently, smuggling has been made worse by police and army complicity. It is estimated that 20 per cent of the volume of imports since 1987 has consisted of contraband. However, smuggling has brought down the cost of living and has partly helped to quell urban grievances and protests. However, on the other hand it has ruined local manufacture of certain goods, worsened the antagonism between town and country, had a sharp impact on firms manufacturing for the domestic market, cut down the resources of the State and increased the high level of unemployment.

44. Haiti is a deeply religious country. The Catholic Church has played a major role in moulding the Haitian people. It was a fundamental factor in the liberation struggle which culminated in 1804 with the proclamation of independence. Under the Duvalier presidency (1957-1986) new relations were forged between the Catholic Church and those in power; François Duvalier used the national clergy to underpin his political activity, consolidate the regime and protect his interests. After the fall of Duvalier, the Catholic Church adopted a low profile and avoided direct intervention in politics. Since then it has sought to preserve unity, which is constantly under threat from the vigorous activity of the advocates of liberation theology and the leaders of the "Petite Eglise" (popular Church). Besides its usual activities, the Church has restricted itself to social work and plays a discreet role as the guarantor of change. In the social sphere it is carrying out a project to teach 3 million Haitians to read and write in five years. After the burning of the Cathedral and the Nunciature, and the events of 6 and 7 January and throughout the Government of President Aristide, the Catholic Church remained cautious and defensive about the threats directed at it.

45. The period of expansion and consolidation of Protestantism began with the arrival of the Adventists in 1905, and above all with the United States occupation (1915-1934) which strengthened American influence. Currently, a thousand ministers and catechism teachers are responsible for organizing the Protestant population. The Protestant Churches are actively involved in activities such as education: 50,000 people are enrolled in the Salvation Army's school and in Methodist primary schools. The same Churches are also active in other sectors such as health, nutrition and social work in general.

46. Voodoo is of particular religious, social and political significance in Haiti. The importance of Ouidah (in what is now the Republic of Benin, formerly Dahomey) as a French slave port in the eighteenth century played an important role in shaping Haiti's future ethnic composition. The traditional beliefs of the slaves, for whom voodoo was the only way to assert themselves against the white plantation owners and the established authorities, were characterized by their roots in Togo and Dahomey. The question of voodoo in

Haiti is tied in with the period of conquest and slavery. Voodoo is a body of beliefs and rituals of African origin, which is closely interwoven with Catholic rituals, and which constitutes the religion of the majority of Haiti's peasantry and urban proletariat. Voodoo derives from the word "voudun", signifying divinity in the Ewe and Fon languages (spoken in Togo and Benin). The houngan (priests) and the mambo (priestesses) are mostly rural people who are initiated by their parents and whose vocation was revealed to them in a dream. The faith also involves initiation (ceremonies take place in a temple or on a farm) and rituals (voodoo is divided into two rituals: the rada rite (originating in the Kingdom of Arda (Allada) in Dahomey, and the petro rite whose origins lie further to the south (Gabon, the Congo and Angola)). Belief in zombies (living dead) is widespread in the Haitian countryside, as well as belief in werewolves, and bakalous (diabolic spirits).

47. At the present time, major basic needs are not fulfilled in Haiti. In terms of incomes, Haiti ranks below the poorest countries in Asia and Africa; economic growth is minimal, virtually none of the inputs needed for productivity, such as fertilizers, technology and energy, are used; supply of foodstuffs is scarce; infant mortality is high and enrolment in secondary schools is low. Haiti had barely begun to emerge from the stagnation of the 1986-1987 period, when it experienced a further deep slump and the gross domestic product has continued to decline. Unemployment, which grows worse, particularly in the towns, already affects over 30 per cent of the population of working age. In addition to the rise in prices, social services have deteriorated sharply. Efforts to break this vicious circle have been severely hampered by the scant administrative and management capacity to develop the country and by the shortage of funds. The widespread crisis has been further aggravated by the social and political instability under the successive Governments since 1986. The coup d'état against the Aristide Government made the situation even worse, because all foreign funding and aid programmes were suspended.

48. In the political sphere, it can be said that justice, personal safety and the police are priorities for the Haitian Government. Justice is the most critical sector, as the proper establishment of democracy in Haiti is contingent on the success of reforms to the system of justice, which is characterized by the inadequacy and the widespread corruption of its various organs. Such measures and reforms must focus on training judges, magistrates and lawyers, establishing an independent judicial administration and humanizing the prison system. In addition, Haiti's police force is not trained to protect human lives and to safeguard the population. The army, which has been given police functions, has never been properly equipped and trained to perform its task. Accordingly, it is essential to provide Haiti with assistance to reorganize the Ministry of Justice, which is constitutionally responsible for the police, and as part of such assistance, to give priority to the police, to training its members and preparing professional officers to take over gradually from the army.

49. In the social services, Haiti's priority needs are in the field of basic education, primary health care, employment and the establishment of basic water supply in both urban and rural areas. Generally speaking, school attendance is at its lowest level: 50 per cent of children of school age do

not attend primary school. Official figures give an illiteracy rate of 85 per cent. As far as pre-school education is concerned, only 100,000 out of 1,340,000 children, i.e. 10 per cent, attend pre-school establishments. Secondary schools are attended by only 28 per cent of the number of children of secondary school age. Seventy per cent of teachers have no professional qualifications or their level of training is inadequate. The education system is antiquated; the majority of school premises are run-down or unsuitable. In view of this situation, international aid should be provided to develop integral programmes of formal education and to achieve mass enrolment in primary schools.

50. Providing primary health care is the fastest way for Haiti to improve the poor health of the majority of its population. Haiti has not even reached the minimum level of health: in 1990, 1.8 million inhabitants lacked access to health services, and infant mortality was the highest on the Continent. Health facilities are in short supply, food is insufficient, and 3.8 million people lack drinking water. In such circumstances, the providing of drinking water, establishing a health infrastructure and improving the diet are the most urgent priorities if the health of the population is not to deteriorate even further.

III. DEVELOPMENTS IN THE OVERALL SITUATION IN HAITI IN 1991

A. From January to September 1991

51. Developments in 1991 were deeply marked by the preparations for the elections and by the elections themselves, which culminated in the victory of President Aristide, who took office in February. The elections were organized by the Government headed by Mrs. Ertha Pascal Trouillot, who had provisionally accepted the position of President on 13 March 1990 in place of General Prosper Avril, in accordance with the terms of the 1987 Constitution, pursuant to which, if the office of President of the Republic fell vacant, the position should temporarily be filled by the President of the Court of Cassation. The elections, which were successfully held on 16 December 1990 and 20 January 1991, under the supervision and with the assistance of the United Nations, the Organization of American States, and of democratic institutions and Governments, ended in victory for Jean-Bertrand Aristide, who won an overwhelming majority of 64.48 per cent of the votes cast. Second place was taken by Marc Bazin, with 14.2 per cent, followed by Louis Dejoie, with 4.88 per cent, Hubert de Ronceray, with 3.34 per cent and Sylvio Claude with 3.0 per cent. Of the six other candidates, the best placed obtained 1.83 per cent and the last obtained 0.62 per cent. Reference will not be made in this report to the preparatory phase of the elections or to the elections themselves, as they are described in detail in the previous report (E/CN.4/1991/33 and Add.1).

52. Before President-Elect Jean-Bertrand Aristide took office, on the night of 6/7 January 1991 a coup d'état occurred. It was headed by Roger Lafontant, former chief of the Tontons Macoutes and former Minister of the Interior under the Government of Jean-Claude Duvalier, who together with some 20 accomplices seized an army tank, arrested the Provisional President at her home and took her captive to the Presidential Palace, where Roger Lafontant declared himself President, after forcing Mrs. Trouillot to sign a letter of resignation. This

attempted coup d'état was thwarted a few hours later, thanks to the combined action of the population and the armed forces. Roger Lafontant was arrested on the morning of 7 January and handed over to the judicial authorities, before being tried and sentenced by the courts, together with the other plotters. The abortive coup d'état led to speculation over the preparations, the possible links with other sectors and the ease with which the plotters had been able to take over the National Palace.

53. Another serious incident that occurred before the general election scheduled for 20 January 1991 was the massacre on 17 January, of peasants in the village of Gervais, in the fifth section of Saint Marc, in lower Bocozelle, in the south of the Department of Artibonite. This conflict, involving a clash between two powerful landowners, was discussed at length in the previous report (E/CN.4/1991/33/Add.1, paras. 23-35).

54. From the outset, on 7 February 1991, President Aristide's Government was perceived as representing the end of a long period of dictatorships and the emergence of a new form of authority: the swearing in of the first President in Haiti's history to have been democratically elected with massive popular participation held out hope for all those who wanted a change to democracy, based on freedom and political participation and on social and economic justice. On account of his social background and for various other reasons, Aristide embodied such hopes; he symbolized resistance to the previous governments inherited from colonization, from slavery and from authoritarianism. In contrast with the vast majority of the political leaders up until then, Aristide was designated by a popular election. He led from below, through his day-to-day pastoral and social actions. He did not come from the traditional political class or from the bourgeoisie or from the armed forces. He was of peasant origin. His generation, which grew up under the Duvaliers, is committed to combating "Macoutism", gives voice to the grievances of the people and advocates democratic values. In addition, the fact that he is a priest enabled him to benefit partly from the popular enthusiasm generated by the Church since 1983, when, during his visit to Haiti, Pope John Paul II critized the dictatorship and demanded a political and social shift towards democracy and justice in Haiti.

55. During his Government, President Aristide had to face different forces, pressures, difficulties and exigencies: (a) first of all, the natural reaction of the armed forces, which viewed the popularly elected civilian Government as a challenge to their traditional political power; (b) subsequently, the Catholic hierarchy and the Vatican itself, which certainly could not remain indifferent to the attacks on them, such as the burning of the headquarters of the Episcopal Conference and of the Cathedral, allegedly caused by Aristide's supporters, or to the attitudes and statements in which the President defined himself as an advocate of liberation theology; (c) the conservative sectors, which perceived the threat to their interests from a Government that had promised and was prepared to initiate thorough social and economic reforms; (d) the Duvalier sectors, in particular the Tontons Macoutes, who were persecuted and accused of having committed crimes during previous Governments, and even during the Governments that followed Duvalier. Aristide's Government also had to face a number of political and institutional problems: (a) the dissatisfaction among political parties and their leaders on account of the low turnout at the elections, in contrast with

the high percentage obtained by Aristide; (b) the internal contradictions within the actual political front that carried him to power, within which political ambition and conflicts between factions had already begun to emerge; (c) the administrative shortcomings of his Government, which mainly comprised individuals with very little experience in managing public affairs; (d) the growing expectations of the Haitian population, who, with the natural impatience of those who hope to improve their precarious living conditions, demanded urgent and daring policies and extensive welfare benefit programmes; (e) conspiracies nourished from inside and outside the country by those ousted from power, and finally (f) criticism from various sectors which censured Aristide's Government for its lack of a specific programme, the absence of a societal project and of proper organization. There were also some abuses of power by the Executive, which disregarded the other authorities and institutions.

56. When he took office, President Aristide announced that there was no urgent need to draw up an action plan defining and outlining the rules of procedure and the relationships between his Government and the other political forces and the country's institutions as a whole. He emphatically stated that his priorities were the grievances of the people, and that, as he had said, "the rules of democracy make it necessary to deal with the needs of the people". Although neither President Ariside nor his immediate assistants and counsellors shaped a specific organic project when they came to power, it was possible to make out from their speeches, statements and publications the nature of the guiding principles of their policy and to determine which fundamental tasks the new Government intended to perform. The basic principles were justice, participation and transparency.

57. In the political field, the President undertook to adopt specific measures to guarantee respect for human rights, to strengthen justice and to protect personal safety. This required the departure of the officials most discredited by their involvement with the former Duvalier regime and the Governments of Namphy and Avril, the replacement of the "section heads" by new regional, communal and local government institutions, the training of a professional police force, distinct from the armed forces, as provided for by the 1987 Constitution, and lastly, the review and modernization of the judicial and prison systems.

58. In the economic field, he stated from the very outset his preference for an economy based on participation, particularly in regard to the peasants. A programme comprising a start on agrarian reform as well as technical and credit support for small and medium-sized peasant enterprises was proposed. He announced a tax reform to rationalize finances, increase the State's resources, to improve and expand services and establish a proper civil service. In the social field, a literacy campaign was proposed together with health care and the extension of health services, greater emphasis on public education, the creation of new jobs and the improvement of working conditions. In general terms, although it was never precisely defined, Jean-Betrand Aristide's programme of government may be viewed as a project for modernization to implement a change towards political and social democracy.

59. At the beginning of his mandate the President announced the composition of the Government: Prime Minister, Minister of the Interior and Minister of Defence: René Preval; Minister of Agriculture, Natural Resources and Rural Development: François Severin; Minister of the Economy and Finance: Mary Michele Rey; Minister of the Plan, External Cooperation and the Civil Service: Renaud Bernardin; Minister of Information and Coordination: Marie Laurence Jocelyn Lasseque; Minister of External Affairs and Religion: Marie Denise Fabien; Minister of Public Works, Transport and Communications: Frantz Varella; Minister of Social Affairs: Ernest Verdieu; Minister of Trade and Industry: Smarck Michel; Minister of Health and Population: Daniel Henrys; Minister of Education, Youth and Sport: Lesly Voltaire; Minister of Justice: Bayard Vincent.

60. One of the first decisions taken by the authorities after the swearing-in of the new President on 7 February 1991 was to forbid various high officials of the outgoing Government, beginning with former President of the Provisional Government Mrs. Ertha Pascal Trouillot, to leave the country. In the middle of the inauguration ceremony the Minister of Justice, Bayard Vincent, personally delivered to Mrs. Trouillot the first summons to make a statement as a "key witness" in the investigation into the attempted coup d'état led by Roger Lafontant on the night of 6/7 January. On 4 April, Mrs. Trouillot received a further summons to testify before the Civil Court of Port-au-Prince concerning her alleged complicity in that attempted coup d'état; she was then arrested and taken to a prison. Mr. Louidor, Government Commissioner to the Civil Court asserted to a local radio station that the questioning of Mrs. Trouillot had yielded sufficient evidence to justify an order to arrest her; no details were ever given on the nature of the information concerned. Mrs. Trouillot was imprisoned for one night. She was then released and afterwards placed under house arrest. It will be recalled that Mrs. Trouillot, a judge in the Court of Cassation, was made Provisional President of the Republic on 13 March 1990 after the political crisis that forced General Prosper Avril to take refuge in Miami. During her provisional rule, Mrs. Trouillot achieved the basic objective of calling and holding elections. This measure against her was seen as an attack on a person who had without any doubt made a praiseworthy and extraordinary effort to put Haiti on the democratic political path: it was a bad beginning.

61. Subsequently, on 26 March, the authorities arrested on a charge of endangering State security, the former Minister of Information of the Prosper Avril Government, Anthony Virginie Saint-Pierre, and Isodore Pon Gnon, a retired major in the armed forces and former commander of Fort Dimanche. Arrest warrants were also issued against the former mayor of Port-au-Prince, Frank Romain, accused of having organized the massare at the Saint Jean Bosc Church and against the former Minister of Defence in the first Namphy Government, General William Regala. The warrants against these two persons could not be executed since they were out of the country. The case of the imprisonment of Anthony Virginie Saint-Pierre aroused protests from human rights bodies to the Inter-American Commission on Human Rights.

62. During the tenure of President Aristide's Government violence continued in the rural areas, particularly in the region of Artibonite, where serious clashes occurred during June and July 1991; at Hattes-Cheveux, near Estève,

where two people were killed by a military patrol on 17 June; at Petite-Rivière in Artibonite, when soldiers killed a peasant on 21 June during a dispute between the inhabitants of two adjacent sections; and at Saint Michel, where two people were murdered, one of them a member of the council-elect in the Saint Michel section. This last incident took place after disputes over the choice of a new community policeman. Finally, another incident occurred at Carca-Cavajal, on the central plateau, on 1 August 1991, in which four civilians and one soldier were killed after a quarrel about land. These land disputes illustrate the problem of agriculture and the peasants in Haiti and make programmes for solving that problem a priority matter. It can be done through a rural programme adapted to realities in the country that would have as one of its first objectives the distribution of State land among the peasants.

63. To curb this rural violence, President Aristide's Government had launched a process of demilitarization of peasant society. In messages addressed to the various military commanders, the Commander-in-Chief of the Armed Forces of Haiti announced on 3 and 5 April 1991 the dismissal of the section chiefs and the transfer of their functions from the armed forces to the Ministry of Justice. For its part, the Ministry of Justice sent instructions to the Government Commissioners attached to the courts of first instance requesting them to guarantee supervision of the various section chiefs in the communes under their jurisdiction. Nevertheless, problems continued, among other reasons because military authorities continued to operate in practice through the section chiefs and hindered the exercise of any control over them by the courts and other organs of justice.

64. On 14 June 1991, the trade unions organized an important demonstration voicing the ever-increasing discontent with the measures adopted by the Government of Prime Minister René Pleval which had caused an increase in the cost of living. Staples such as sugar, cooking oil and flour had increased in price to such an extent that it was almost impossible for low-income groups to buy them. This spontaneous demonstration led to the dismissal of the Ministers of Trade and Social Affairs. The leaders of the "Storm Wind" operation, directed by the Independent Union of Haitian Workers (CATH) and the leaders of the people's organizations were for the most part youths and unemployed persons from the slum districts in the cities. Anti-bourgeois rhetoric, reckless promises and demagogy affected these sectors which, because of their own needs, are especially sensitive to slogans of that type and tend to become desperate very quickly and to rush into violence.

65. It was in this context of discontent and potential violence that the murder that occurred on 26 July 1991 of five young people (Stevenson Desrosiers, Bastion Desrosiers, Shiller Pierre, Walky Louis and another unidentified person) who, accused of being criminals, were apparently murdered by the Port-au-Prince police. Witnesses described events as follows: the five young people were in the garage of a supermarket when one of them was attacked and then killed by Captain Neptune, after a quarrel. The other four were arrested by the police called in by Captain Neptune and taken off to the barracks, where they were beaten up. They were then taken to different places and shot dead; their abandoned corpses were found the following day on National Highway No. 1 near a sugar mill. After this had taken place, members of the victims' families accused Captain Neptune, Head of

the Investigation Department in the local police, of being responsible for the summary executions and their main instigator. Investigation into these murders is still in progress. Captain Neptune is at present under arrest as allegedly responsible for the execution of four of the five young people.

66. Meanwhile, direct and open conflicts between the Executive, the political parties and the two Chambers of Parliament continued to have a strong impact on the national political process. The tension began on the first day of entry into power of the new Government, when President Aristide failed to consult Parliament on the appointment of the Prime Minister. The first open tension between the Executive and Parliament surfaced in May 1991 in public accusations against the Senate: it was charged with blocking the Government's action by requiring René Pleval to submit to personal questioning before the Senate approved his appointment as Prime Minister. Another source of this conflict was the Government's appointment of the judges of the Court of Cassation without informing the Senate. As a riposte to this appointment without its prior approval, the Senate unanimously adopted a resolution condemning the Executive's decision, considering that the Government was rejecting discussion and violating constitutional provisions. A month later, the Senators were informed, through the press, of the appointment of new ambassadors, without prior approval as required by the Constitution. On 29 August 1991 the Governing Body of the Senate resigned en bloc as a protest against the unapproved appointments of Gilbert Myrtil and Rosemond Jean-Phillipe to membership of the Court of Audit and the Administrative Disputes Court. This resignation en bloc of the Senate's officials was aimed at drawing attention to the behaviour of the Executive, which was in this way impeding the observance of constitutional procedures.

67. This tension also spread to the political front. An open conflict arose between the "Lavalas" movement (i.e. the partisans of President Aristide) and the National Front for Change and Democracy (FNCD), a political front made up of several parties and which had supported Aristide's candidature. The movement and the Front each accused the other of being the cause of the conflict. The leaders of the Lavalas movement explained the situation by saying that the leaders of the FNCD wanted to take over government posts and to allocate civil service jobs among their followers. The FNCD leaders stated that the origin of the conflict lay in a straightforward difference of approach: whereas the Lavalas movement made out that the political system could function without parties in a sort of direct democracy, maintaining itself only through the emotional relationship between the charismatic leader and the masses, the FNCD advocated fulfilment of the constitutional provisions that defined the system as a representative and pluralist democracy, with respect for the parties, in which the Congress of the Republic constitutes, and should be acknowledged as, one of the branches of the State. This conflict between the FNCD and the Lavalas movement contributed largely to the tension which arose between the Executive and Parliament and persisted until the events of 29 September. This explains, at least in part, the attitude assumed by Parliament after the coup d'état.

68. The first cause of this conflict between the executive and Parliament went back to the appointment of René Pleval as Prime Minister. The members of parliament pointed out that under the Constitution the Legislature had to be consulted and the nomination submitted to it for consideration. Aristide's

partisans accused Parliament of seeking to paralyse the Executive by opposing Pleval's appointment. This conflict continued to become ever more acute until it faced its greatest challenge on 13 August 1991: on that date, Parliament summoned the Prime Minister, under article 129-2 of the Constitution, which provides that Parliament can summon any member of the Government to give an account of the acts of its administration. This first summons took place in an atmosphere of great tension between the deputies and the Prime Minister. It was followed by an exchange of written notes between the parties to the dispute. The deputies accused the President and the Prime Minister of failing to abide by constitutional procedures and resorting to threats and terror, refusing discussion and sending the masses to demonstrate around Congress in a threatening manner.

69. Under the 1987 Constitution, if Parliament is not satisfied with the Prime Minister's actions it can take the necessary steps and call for a vote of censure. Article 129-4 of the Constitution specifies what the Prime Minister must do if a censure motion is passed: he must submit his resignation to the President of the Republic. According to the Constitution, the majority party or majority coalition forms the Government. The President of the Republic chooses but does not repeal; Parliament does not choose but has the power to bring about resignation. Thus the Prime Minister is answerable at one and the same time to the President of the Republic and to Parliament. These two authorities share in the sovereignty of the people.

70. On 29 August, the deputies again called on the Prime Minister, René Preval, who had previously declined to appear, for a statement. When they were waiting in vain for the Prime Minister to appear at a stormy meeting, the deputies insisted once more on what they considered to be obvious irregularities by the Executive in disregard of constitutional procedures. The Prime Minister's refusal to respond to Parliament's summons convinced the deputies that the Executive was not inclined to respect legality and the rules of political democracy.

71. The political atmosphere was growing gradually worse. The situation became more and more tense: the Senate resented the Executive's failure to recognize its attributions and powers; the Prime Minister rejected a summons to appear; the Lower Chamber considered itself unable to perform its tax-raising duties. In this difficult situation, the members of parliament, in an extraordinary effort to avoid a major crisis, asked President Aristide to act as middleman between the Legislature and the Government. In view of constitutional considerations regarding the interpretation of articles 151, 156 and 161, enabling the President of the Republic to take the floor at any time in Parliament, the President of the Chamber of Deputies, Pierre Duly Brutus, suggested to the Head of State that he should receive a Parliamentary Commission in the National Palace or, if he so preferred, that he should present himself before the Presidents of the Commissions of the Lower Chamber. President Aristide preferred this last option and decided to accompany Prime Minister Preval to Parliament, thus responding favourably to the request of the deputies who had asked for his mediation.

72. On 4 September 1991, 36 of the 46 deputies present decided to suspend the voting on the summoning of the Prime Minister. This measure was adopted at the end of the summons and only a few hours after an exchange of opinions in

the National Palace between President Aristide and representatives of Parliament. According to the members of the Lower Chamber, the immediate resignation of Preval could make it difficult for the Government to act at the end of the fiscal period, since the proposed budget had not yet been submitted. Thus, as a measure of political caution, it was wished to avoid a major crisis. Finally, the fact had to be taken into account that the mark of the Preval Administration was the lack of a coherent plan for coping with national problems such as unemployment, the high cost of living and urban and rural violence. It was therefore agreed that the summoning of the Prime Minister, which was to have ended on that same day in a vote of confidence or a vote of censure, would take place in January 1992, when the Chamber would take its final decision. In any case, it was still clear that none of the political parties represented in the Chamber was satisfied with the replies offered by the Prime Minister.

73. During this whole period of tension between the Executive, the Government, the Deputies and the Senate, open threats were made against members of parliament on various occasions during demonstrations around the parliament building and in general in the streets of Port-au-Prince, in which used tyres were burnt as a symbol of death by "necklacing". These popular demonstrations, with their threats of necklacing (the "punishment of Père Lebrun"), occurred on many occasions, every time Parliament or one of its Chambers challenged or criticized the Executive. On 13 and 29 August 1991 the meeting of Parliament was threatened by a demonstration by President Aristide's supporters, who tried every means to have their way, with attacks on the persons of members of Parliament and on the rights and duties of the Legislature. Actual cases were also revealed of threats of necklacing against some political leaders and in general against real or potential opponents of the Government.

74. While the Haitian Constitution stipulates representative democracy as the system of government, i.e. the existence of collegiate political bodies which represented the will of the people and which, in consequence, acts in the name of the people, an important political sector, and especially President Aristide's supporters, spoke in theory and acted in practice as if the system were one of direct democracy, i.e. as if the assembly to be consulted in every case was the population in general. This recourse to the power of the people, ignoring the institutions recognized by the Constitution, or passing over or getting round them, was bound to lead to an institutional political crisis. In the case of Haiti, the 1987 Constitution establishes separation of powers and political pluralism in articles 31(1), 58, 59 and 60 (2). At the same time as it provides for direct participation by the population in important decisions concerning it through the institutions provided for in articles 61 and 87(5), i.e. the process of decentralization, local and departmental assemblies, and so on. The 1987 Constitution could not then be adapted to the principles of direct democracy, which conflict with them in conception and nature. This institutional conflict faced by the nascent Haitian democracy raised the problem of the sovereignty of supreme political power and political authority and without doubt was one of the elements that made for the crisis which produced the coup d'état on 29 September.

75. While the conflict between the branches of the State continued and worsened, a new problem appeared on the political scene: the trial held on 28 to 30 July of Roger Lafontant and his accomplices for the abortive coup d'état of 6/7 January 1991. This trial produced still worse tension among the population. The affair took on a special character because of its importance and wide implications and above all because, on the one hand, of the idea that Aristide's supporters had of Lafontant and, on the other hand, because all the democratic forces saw in this former chief of the Tontons Macoutes a man capable of any crime because of his ferocity, aggressiveness and boldness. The trial of the perpetrators of the attempted coup d'état was held in the First Chamber of the Civil Court of Port-au-Prince which acted with criminal jurisdiction and with the assistance of a jury. The hearing was presided over by Judge Charles Arnold, flanked by three assistant attorneys in the absence of an Attorney-General to put the case for the prosecution. The trial lasted 22 hours. The masses roamed round the courthouse where the trial was being held, calling for a verdict of guilty.

76. On 24 July 1991 a panel of five lawyers was officially appointed through a letter from the President of the Civil Court to the Dean of the Bar Association of Port-au-Prince to act for the defence of the 22 accused. Of those 22, four declared that they wished to choose their own lawyers. The witnesses were present at all the proceedings before offering their own testimony. During the trial, serious irregularities were found, it appears that there were witnesses who had spoken to each other and with other people about what they would say in their testimony, something that is contrary to article 250 of the Code of Criminal Procedure, which provides that the president of the court will take the necessary measures to prevent the witnesses talking to each other about the crime and the accused before they give their own testimony. Finally, a verdict of hard labour for life was requested for 18 of the 22 accused found guilty by the jury of the crime of conspiracy and endangering the security of the State; the other four were condemned to 10 years' imprisonment.

77. From the point of view of the administration, it may be said that the Government used the months from February to September in order to establish a basis for a new order of things. Although very little could be achieved, given the economic and financial difficulties and the inexperience of the Government team, they did decide to tackle the real problems of the country. Despite the results, there was a desire for efficiency and a willingness to satisfy the essential needs of the community as a whole.

78. The basic problem confronting President Artistide's Government was the economic situation in Haiti. With the country brought to its knees by 30 years of dictatorship and five years of political convulsions, the new administration was faced with a state of total ruin. Everything was still to be done: roads, public services, communications and transport, literacy, education, health, food, food production, justice and security, and so on. The high cost of living had become the people's main grievance. It must be acknowledged that the Government achieved some success. Public finances were put on a sounder basis, the rate of exchange, the rate of inflation and the monetary base showed some positive results. There was more efficiency to be seen in the collection of taxes. At the same time, the administative reforms and negotiations with the International Monetary Fund and the Paris Group had

a positive impact on the general situation of the economy. International aid in the shape of programmes by multilateral organizations and foreign investments was about to materialize when the events of 29 September took place, and, as we know, made it necessary to suspend those programmes and investments.

79. From the social and cultural point of view, the achievements that seemed most important from February to September 1991 were an apparently good atmosphere for cooperation between the civilian government and the armed forces and the also apparently gradual take-over of the State apparatus by the civilian authorities; the struggle against lack of security, decisive action against drugs and smuggling; and the cleaning-up of the administration. Another improvement was the supply of electricity. Other aspects, equally urgent, did not improve: the peasants were still suffering from the exactions of the landowners and the section chiefs. The agrarian reform was still the subject of discussion. The high cost of living caused by the increase in market prices had a particularly severe impact on the poorest sections of the population. The literacy campaign came to nothing, without any coordination and without any allocation of resources. Unemployment did not decrease, and the environmental and public health programmes also lagged behind.

80. During his visit from 4 to 7 December 1991, the Expert had an opportunity to talk to General Raoul Cedras and seven of the colonels that made up the Armed Forces High Command. He received from them a brochure, "Memorandum for history and for the friends of the Haitian people" (the seven months of the Presidency of Father Jean-Bertrand Aristide), which was something like a black book containing accusations by the armed forces against President Aristide. They criticized him for the following:

(a) the dismissal of five generals and a colonel without previously consulting the Armed Forces High Command;

(b) the ban on former President Trouillot and officials of her Government from leaving the country;

(c) the "unlawful" appointment of judges to the Republic's Court of Cassation;

(d) the "unlawful" appointment of Ambassadors and Consuls General;

(e) the appointment of foreigners to the Government;

(f) violation of the right to freedom of assembly and association;

(g) violation of the right to life, and in practical terms the cases of Roger Lafontant and Sylvio Claude;

(h) violation of the principle of the separation of powers;

(i) violation of the constitutional and legal provisions concerning the civil service;

(j) the unlawful creation of a parallel military force: the Presidential Security Service;

(k) the unlawful suspension of the Supreme Court of Audit and the Administrative Disputes Court;

and finally,

(l) various violations of the Constitution and of human rights.

B. Situation in Haiti from 29 September 1991 onwards

81. On the night of 29/30 September 1991 a coup d'état began with a movement of troops ordered by the Army High Command. Armoured units took up position in the streets and tried to arrest President Aristide in his house at Tabart, a place some 10 km to the north of Port-au-Prince; President Aristide was able to escape to the Presidential Palace, accompanied by the Ambassador of France; there, after a skirmish which led to the death of one of the officials loyal to him, he was arrested and taken to military headquarters. Although his life was spared, he was forced to resign. Later on, he was given a safe-conduct and taken to the airport, accompanied by the Ambassadors of France, the United States of America and Venezuela and under strong military escort. He travelled to Venezuela on the afternoon of 1 October in a private aircraft sent from Caracas by President Carlos Andrés Pérez.

82. General Raoul Cedras, Commander-in-Chief of the Armed Forces of Haiti, read on the national radio a statement in which he affirmed that the armed forces were taking power; that they regretted the violence that had occurred and had set up a military governing council made up of himself and Colonels Alix Silva and Robert Mora Charles, the latter person being until that moment Haitian military attaché to the Government of the United States of America.

83. As soon as it realized that a coup d'état had taken place, the population took to the streets with the intention - as had been done during the attempted coup by Lafontant in January - of building barricades. Some 30 trade union organizations called for a general strike. However, the demonstrations were violently and savagely put down by the military and armed civilians, who shot to kill President Aristide's supporters in order to prevent them organizing and taking action. According to reliable sources, in the first few days after the coup de état hundreds of persons were killed and wounded, particularly in the poor districts of the city. Warned by the experience of what had occurred on 6 January 1991, when the people took over the streets and prevented the Lafontant plot from succeeding, this time the armed forces acted rapidly, intimidated the population and prevented them taking to the streets, in order to forestall a popular uprising. The strategy of the armed forces was preventive repression.

84. The President of the Christian Democrat Party (PDCH) was one of the first persons killed in the violence unleased on that same night of 29 September. On that night, when he left the town of Cayes in the south of the country to return to Port-au-Prince, Pastor Sylvio Claude was killed, being intercepted at a crossroads known as the Four Ways. His murderers set fire to the vehicle

he was travelling in. He was able to get out of the vehicle and take refuge in a military post where there were only three soldiers. Because they were not strong enough to resist the mob, the soldiers handed him over. He was killed and his corpse was burnt. On that same night in the maximum security wing of the National Penitentiary where he was imprisoned, Roger Lafontant was executed. The de facto Government of Haiti that emerged from the military coup has accused President Aristide of having ordered both murders. The capitain who was in charge of the guard at the National Penitentiary signed a statement asserting that he had on that night received an order by telephone from President Aristide himself to execute Lafontant. As for the case of Sylvio Claude, the Haitian military said that the murderers travelled that night to Cayes, after being sent by Aristide from Port-au-Prince to murder the Pastor. Of course, none of these accusations has been properly investigated or proved.

85. Once in Caracas, as guest of the Government of Venezuela, President Aristide began international political contacts in search of a solution to the crisis. On 1 October, he travelled to Washington where he was received by the Ad Hoc Meeting of Ministers for Foreign Affairs of the American countries that had been urgently convened under the terms of resolution 1080 of the General Assembly of the Organization of American States; President Aristide described to the meeting what had happened in his country. The Ministers for Foreign Affairs of the member countries of the Organization of American States resolved, inter alia, to reiterate their strong condemnation of the coup d'état in Haiti and to demand full application of the rule of law and immediate restoration of the exercise of the legitimate authority of President Aristide; they considered that the sole legitimate representatives of the Government of Haiti to bodies, organizations and entities of the Inter-American system were those appointed by the Government of Jean-Bertrand Aristide; they recommended the diplomatic isolation of the de facto Government and the suspension of economic, financial and commercial ties with Haiti until the rule of law was restored; they asked the Inter-American Commission on Human Rights to adopt measures within its competence to safeguard and defend human rights in Haiti; and they kept open the Ad Hoc meeting of Ministers for Foreign Affairs with a view to taking the necessary measures to cope with the situation. A new resolution of the Meeting of Ministers for Foreign Affairs on 8 October 1991 urged the Governments of Member States of OAS to freeze the assets of the Haitian State and impose a trade embargo on Haiti, except for humanitarian aid. The meeting also decided to constitute a civilian mission to re-establish and strengthen constitutional democracy in Haiti.

86. The Inter-American Commission on Human Rights, in a press release of 1 October, expressed its profound consternation at the events that had occurred in Haiti, emphasizing that the coup d'état of 29 September constituted a clear infringement of fundamental political rights and other rights and freedoms.

87. On the occasion of his journey to Washington, President Aristide had an interview with President Bush. In later political negotiations and international journeys, he had interviews also with the Presidents and Heads of Governments of France, Switzerland, Canada, Venezuela, olovia, Colombia, Mexico, and so on and with representatives of important international agencies and organizations.

88. In addition to OAS Member States, many other Governments have condemend the coup d'état against the legitimate Government of President Aristide: France, like the United States, suspended financial aid. Similarly, the international agencies suspended their programmes. The same attitude has been taken up by UNESCO, the European Community, UNDP and other organizations and agencies. Mexico and Venezuela suspended their deliveries of oil.

89. On the night of 30 September/1 October 1991, the United Nations Security Council met informally (because of the principle of non-interference in the internal affairs of Member States) to examine the situation in Haiti. After listening to President Aristide, the Security Council, on 3 October 1991, condemned the coup d'état and demanded the restoration of the legitimate Government, leaving to the General Assembly the task of taking any measures needed. On 11 October 1991, in the presence of President Aristide, the United Nations General Assembly unanimously adopted resolution 46/7 on the situation of democracy and human rights in Haiti. In that resolution the General Assembly strongly condemned both the coup d'état and the use of violence and the violation of human rights; affirmed as unacceptable any entity or its representatives resulting from that illegal situation; demanded the immediate restoration of the legitimate Government and the full application of the Constitution and hence the full observance of human rights in Haiti; and finally, appealed to the States Members of the United Nations to take measures in support of the resolutions of the Organization of American States.

90. UNESCO appealed for respect for human rights and the continuity of the democratic process in Haiti. The European Economic Community, after condemning the coup état, decided to suspend its economic aid and to freeze all current cooperation programmes. Its Member States were invited by the President of the European Parliament, Mr. Enrique Baron, to act and exert pressure for the restoration of democracy in Haiti.

91. Non-governmental human rights organizations such as Amnesty International, Caribbean Rights, Americas Watch, the International Commission of Jurists, the Comité de Abogados en Pro de los Derechos Humanos, condemned the coup d'état, which they considered unacceptable, unlawful and contrary to democratic principles. The International Commission of Jurists, after a meeting with President Aristide on 26 August 1991, reaffirmed its demand that the legal Government should be restored in Haiti.

92. Meanwhile in Haiti, Parliament voted on 7 October to depose President Aristide and replace him by the Dean of the Court of Cassation, Judge Joseph Nerette, as interim President. The new President was sworn in before Parliament on 8 October; no representative of the diplomatic corps was present. The new President was made responsible for forming a new government of national unity and arranging elections within 45 to 90 days. Jean-Jaques Honorat, a distinguished figure in the human rights fields and hitherto president of the Haitian Centre for Human Rights and Freedoms (CHADEL), was appointed Prime Minister of the Provisional Government.

93. Since the coup d'état on 29 September the human rights situation in Haiti has deteriorated still further. In the prevailing climate of terror, basic rights are violated almost every day and one regularly hears of people being

persecuted, taken hostage, held without due process, tortured, missing or murdered, both in the capital and in the towns and villages of the interior. It is reported that both military patrols and patrols of civilians in the pay of the military fire shots in the streets against real or potential demonstrators, particularly at nightfall in the poorest districts, threaten the population, surround churches, prevent emergency services from evacuating the wounded and humiliate civilian staff as part of a plan to avert popular protest by means of preventive repression. The atmosphere of insecurity and fear in the capital has prompted many people to seek refuge in rural areas; it is calculated that at least 300,000 people have fled the capital, Port-au-Prince, and sought shelter in the countryside. A similar number have tried to flee the country in small boats. For all the efforts by human rights organizations to obtain clear figures, there is no reliable information on the number of people killed and wounded by the military's repressive actions. The Inter-American Commission on Human Rights put the number of people killed by mid-November at 1,500. On 14 November the bullet-riddled bodies of seven youths were found abandoned outside a factory in Port-au-Prince; communal graves have also been reported. All this is in violation of article 3 of the Universal Declaration of Human Rights, article 4, paragraph 1, of the International Covenant on Civil and Political Rights, article 4 of the Inter-American Convention on Human Rights and article 19 of the Haitian Constitution.

94. Various sources report that around the time of the coup d'état there were a number of illegal arrests, the principal victims being civilian and administrative staff of President's Aristide's Government, political and trade union leaders, journalists, teaching personnel, artists and students. A number of well-known figures have been arrested and taken hostage, Michel Favard, the director of the national radio; Evans Paul, the mayor of Port-au-Prince, who was arrested on 7 October; anti-establishment priests such as Father Eddy Julien of the Diocese of Jérémie. At the time of writing, the singer Mano Charlemagne, the businessman Antoin Izméry, and the trade union leader Joseph Manucci Pierre were still being held. Many people - the exact number is not known - were arrested without a warrant during repressive moves in the poor districts of Port-au-Prince. During the OAS civilian mission to Port-au-Prince on 12 November 1991, around 120 students were arrested when they tried to hold a meeting within the Faculty of Science at the Unviversity. Although the authorities stated that all the students arrested at that time had already been freed, it has been reported that some are still being held. Such arbitrary arrests are a violation of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Political and Civil Rights, article 7 of the Inter-American Convention on Human Rights, and article 24 of the Haitian Constitution, which says that individual freeom is guaranteed and protected by the State.

95. There have also been reports of torture and mistreatment of people under arrest. It is said that some of the methods of torture used in prisons and interrogation centres have caused severe physical and mental injury to their victims. Such violations are contrary to international agreements to which Haiti is a party (art. 5 of the Universal Declaration of Human Rights; art. 7 and art. 10, para. 1, of the International Covenant on Civil and Political Rights; art. 5 of the Inter-American Convention on Human Rights; and art. 25 of the Haitian Constitution). Many people have been searched without a

warrant and their homes have been violated: this happens to anyone suspected of siding with President Aristide, particularly priests and nuns. Such acts are in breach of article 12 of the Universal Declaration of Human Rights; article 17 of the International Covenant on Political and Civil Rights; article 11 of the Inter-American Convention on Human Rights; and article 43 of the Haitian Constitution.

96. Most private radio stations are still off the air and others, including the television service, have been frightened into stopping broadcasting news programmes owing to threats from the military. In late November 1991 only three of the nine radio stations in Port-au-Prince were operating: Radio Nationale, owned by the Government, Radio Tropique and Radio Galaxie. All the stations in Cap Haitian and Jérémie had stopped broadcasting in the face of harassment and attacks. Some stations' equipment has been destroyed or seriously damaged; some journalists have had their press cards confiscated; and some journalists have been detained, among them Miché Sully of Radio Galaxie, Jean-Robert Philippe a former member of the Radio Nationale staff and a correspondent for the Voice of America, and Fernand Balan of Radio Soleil, whose whereabouts in detention are not still known. The independent press has virtually ceased to operate because of threats to journalists. This situation preventing the media from functioning, is a breach of article 19 of the Universal Declaration of Human Rights, article 19 of the International Covenant on Civil and Political Rights, article 14 of the Inter-American Convention on Human Rights and article 28 of the Haitian Constitution.

97. Attempts by students, teaching personnel and other grass-roots and trade union organizations to demonstrate in support of President Aristide have been violently put down: any demonstration is dispersed and followed by house searches, arrests and physical punishment. The Government thus maintains a semblance of peace on the streets, which is doubtless the result of the terror it has spread among the population. Hence the Haitian Government is violating the right to freedom of assembly and peaceful association laid down in article 20, paragraph 1, of the Universal Declaration of Human Rights; article 21 of the International Covenant on Civil and Political Rights; articles 15 and 16 of the Inter-American Convention on Human Rights; and article 3 of the Haitian Constitution.

98. As mentioned above, the most spectacular exodus has been from the poor districts of the capital and provincial towns. The Expert was able to compare his September and December visits, and could see how some of the poor districts of Port-au-Prince had emptied. In Cité Soleil alone, a huge district by the seafront, the population had visibly diminished a great deal. The killings which immediately followed the coup and are still going on, the atmosphere of terror which nightfall brings to the city neighbourhoods, and the rise in prices for basic foodstuffs are all boosting the migration. It is estimated that around 300,000 people have taken refuge in the countryside.

99. Since its independence in 1804, Haiti has always been an overpopulated country which has undergone periods of simultaneous violence and economic crisis. This atmosphere of violence and poverty is perhaps the main reason for Haitian emigration to other countries, especially the United States and Canada, where living conditions are better. Under the President Reagan Administration, the United States and Haiti signed an agreement allowing the

United States Administration to look for, capture and deport illegal Haitian immigrants. This, however, did not check the flow of illegal Haitian immigrants to the United States, which was if anything boosted by the declining economic situation and the continuing violations of human rights.

100. Hopes of freedom, peace, jobs and well-being aroused by President Aristide's entry into office did check emigration somewhat, but it picked up again after the coup d'état. A large number of Haitians have tried to reach the United States and other Caribbean countries by boat, seeking refuge. Many have been rescued at sea, while others have died. According to information from first-hand sources, refugees pay the equivalent of $400 to be allowed on to these flimsy, unsafe boats. The vast majority are intercepted by the United States Coastguard and returned to Haiti or, in some cases, refugee camps on American bases in the Caribbean. Haitians are generally believed to emigrate chiefly for economic reasons, but the current wave of emigration should be regarded as having its roots in the terror that exists in the country as well. These boat people are fleeing repression and a declining economic and political situation. Those who have no opportunity emigrate, or are returned to the country, opt for one of these alternatives, or abscond to avoid repression by the army and the "Tonton Macoutes", or go off to the countryside. Some Haitians returned to Haiti are known to have been arrested and mistreated by the authorities.

IV. LEGAL BACKGROUND AND INSTITUTIONAL ASPECTS OFHUMAN RIGHTS IN HAITI

A. 1987 Constitution

101. The 1987 Constitution was reinstated on 7 February 1991, when President Aristide took office. Since its approval, almost five years before, it had often been violated, suspended, put in abeyance, and then partly reinstated by the various Governments which succeeded the national Government Council until Aristide, meaning the administrations of Namphy, Manigat, Namphy again, Avril and Trouillot.

102. The Constitution comprises a Preamble and 15 Chapters, together totalling 298 articles. Chapter III is entitled "Rights and duties of the citizen" and proclaims and enumerates the basic rights of citizens. It establishes that a citizen may exercise his full civil and political rights from the age of 18.

103. The Constitution abolishes the death penalty; guarantees the freedom, of the individual, meaning that no one may be arrested, tried or imprisoned except in the circumstances and according to the procedures laid down by law, nor be arrested without a legal order except when caught in flagrante delicto; and no one may be held for more than 48 hours without being brought before a court, which must rule on the legality of the arrest and rescind or confirm it by legal decision, stating the reasons; torture and all other forms of coercion are prohibited, and a person in custody may be questioned only in the presence of a lawyer or witness of his choice. Persons awaiting or undergoing trial must be kept separate from those serving sentences, and the regime in prisons must be consistent "with respect for human dignity".

104. The Consitution also establishes that anyone who infringes constitutional provisions on the freedom of the individual may be reported and tried, and officials who perpetrate such acts are personally liable at civil administrative and penal law. Freedom of expression is guaranteed, as are freedom of association and the right to hold public meetings and to demonstrate. The right to education is guaranteed, and primary education is compulsory. The Constitution sets out the right to work, saying that the State will guarantee equality in working conditions, fair pay, leisure, allowances and other benefits, the right to strike is recognized.

105. Private ownership is recognized and protected. Nationalization and confiscation of property are prohibited, but the expropriation of land is permitted, as an exception, for the purpose of agrarian reform. The Constitution establishes that any Haitian citizen whose property was confiscated under the Duvalier regime may "recover his goods before the competent court".

106. The safeguards of citizenship in its broadest sense are guaranteed: no Haitian citizen may be expelled from the country for any reason; no one may be deprived of his legal capacity or nationality; Haitian citizens do not require a visa to leave or enter the country; searches and seizures may be conducted only as provided by law; confidentiality of correspondence and any other kind of communication is inviolable, and may be restricted only by decision of a judicial authority. Again, death sentences, periods in custody, imprisonment and loss of civil and political rights during the Duvalier regime are henceforward no obstacle to the exercise of civil and political rights. The Constitution repealed all laws which limited such rights.

107. The Constitution explicitly states that international treaties, once ratified, automatically form part of Haitian domestic law and take precedence of other law.

108. The Constitution establishes the post of Protector of the Citizens, establishing an Office for the Protection of the Citizens, to protect them against any abuse of authority or by the administration. The Office for the Protection of Citizens will be headed by a citizen selected jointly by the President, the Chairman of the Senate and the Chairman of the Chamber of Deputies, for a term of seven years. The Office will provide its services free of charge to Haitians and other persons resident in Haiti.

109. Other Constitutional provisions on the protection of human rights include restrictions and safeguards which the Government must respect when imposing a state of emergency, and the separation of the army and the police. A state of emergency may be decreed only by the President, supported by the Prime Minister and all other Ministers, and only in the event of civil war or foreign invasion. Once a state of emergency is decreed, the National Assembly must immediately be convened and pronounce on the matter. The state of emergency lapses after 15 days and the National Assembly must vote for it to be renewed.

110. The Constitution limits the number of armed bodies in the Republic to the armed forces and the police: "no other armed body may exist in the Republic," it explicitly states. This provision is directed at doing away

with the "Tonton Macoutes" and preventing the formation of anything similar. The responsibility of the armed forces is to defend the State against external aggression, and their assistance may also be required in the event of natural disasters. They may also be assigned to development work and "subject to previous, duly justified application by the Executive, may lend assistance to the police when the police cannot accomplish their task".

111. The police force is accountable directly to the Ministry of Justice and exists to "investigate misdemeanours, offences and crimes with a view to identifying the culprits". Members of both the armed forces and the police are "subject to civil and criminal liability in the forms and circumstances provided by the Constitution and the law".

B. Legislative update programmes

112. For some years now the Government of Haiti has been trying to reform national legislation; this has being particularly true of the Codes of Criminal and Civil Procedure. The way the criminal law in Haiti is applied by the judicial authorities is ample justification for a thorough revision, particularly as regards classification of crimes, classification of penalties and misdemeanours (infracciones), the introduction of new penalties and the abolition of others which are not appropriate in modern circumstances, etc. Many provisions of criminal law are not even consistent with one another.

113. The Government of President Aristide announced the formation of a Legislative Commission of Experts to study, review, harmonize and propose new and more up-to-date legislation. It was announced when the Commission was set up that it would work in complete independence, would submit its proposals to the Ministry of Justice, which in turn bring them before Parliament. Unfortunately, the coup d'état on 29 September paralysed this effort when it had barely commenced.

C. Judicial system

114. The judicial system in Haiti comprises the Court of Cassation, the Courts of Appeal, the Courts of First Instance, the Magistrates Courts and the Special Courts, the number, composition, organization, functioning and jurisdiction of which are established by law. Each judicial body has an established structure and jurisdiction.

115. The Court of Cassation is the supreme court: it comprises a president, a vice-president and 10 judges. It is generally divided into two chambers, with five judges each, but must meet in plenary for appeal procedures and when hearing challenges to laws or decrees.

116. Below the Court of Cassation there are four Courts of Appeal, based in Port-au-Prince, Les Cayes, Gonaives and Cape Haitien. They hear civil and criminal cases and appeals against verdicts handed down by the Courts of First Instance and the justices of the peace in cases concerning more than purely correctional matters.

117. The Courts of First Instance are in the 13 largest towns in the country: they hear civil cases up to a given amount and criminal cases. There are justices of the peace in the communes and other places stipulated by law.

118. The country also has Courts of Audit to deal with administrative cases, territorial courts to deal with cases concerning ownership rights, and tribunals for juveniles, the armed forces and labour matters.

119. The current state of the administration of justice is disturbing. Despite the many drafts prepared and the good will expressed by the Ministers in President Aristide's Government with whom the Expert talked, the judicial system is still manifestly inadequate and corruption is widespread. People are held arbitrarily, sentenced without due process, prisoners are mistreated, and the safeguards of a fair and just trial are disregarded. Persons in custody are not brought before the appropriate courts within the legal time-limits; trials are subject to excessive delay. For example, in early September 1991 the National Penitentiary contained only 89 convicted persons among a total of 1,035 inmates; in other words, over 900 people had been in pre-trial detention for periods ranging from three days to three years, without appearing before the courts, and without their trials having been started.

120. Whether from incompetence or fear, civil justice is virtually non-existent. The Expert was told that Haitian lawyers were afraid to represent their clients and were subject to intimidation. Generally speaking, people have no faith in lawyers, the courts or proceedings. Corruption and interference by the Executive in judicial matters make justice of no account. Hence, the practice arises of taking justice into one's own hands in various ways: intimidation, threats, physical aggression, killings over land disputes, and "necklacing". Legal safeguards are virtually non-existent in rural areas where "section chiefs" are not under the control of the State.

D. Prison system

121. The prison system in Haiti comprises the National Penitentiary (in Port-au-Prince), some 15 local prisons, plus a few dozen detention centres. The prison population (people in prison for common crimes) is put at between 1,500 and 2,000; the prisons are spread fairly evenly across the entire country. Each of the five departmental capitals has a prison; another 10 towns of lesser importance also have a jail each. Jails, including the penitentiary regime and administration, are under the jurisdiction and control of the armed forces, although there are civilian employees, but they always work under military orders. Officers and soldiers follow the miltary system of rotated assignment to the jails and belong to their respective territorial military units, so that neither officers nor soldiers have any specialist knowledge of prison matters. The armed forces operate entirely independently in this area of the judiciary, with which they have no hierarchical administration or political, territorial, departmental or national links.

122. The soldiers in charge of jails must follow orders from the judiciary (warrants, sentences, referrals, etc.) and allow visits by the judicial officials indicated in the Criminal and procedural codes, but in fact these controls do not exist. Normally, neither justices of the peace nor examining

magistrates nor the Government Commissioners visit detention centres, considering visits useless since they cannot give orders to the armed forces. The Expert, who on several occasions visited prisons in Haiti, was able to see at first hand how the armed forces control everything, even the system of visits, treatment, punishment, and so forth, within prisons, while judicial officials cannot intervene.

123. Since 1986, following the overthrow of Duvalier, a number of moves were made to try and set up, within the Ministry of Justice, a prison management and administration service. The only legal text on the subject to have been approved is a decree from 1989 establishing a Prison Administration Department within the Ministry of Justice. No new laws or regulations have been issued to govern its organization and operations. Such laws and regulations do exist in the form of drafts, as promulgation depends on enforcement of the constitutional separation of the police and the armed forces and, hence, the incorporation of the police force under the Ministry of Justice. These reforms were being debated at the time of the coup d'état on 29 September 1991, and made up a major part of the reform programme which President Aristide had put forward. What happened to them is not known at this stage.

124. Besides the armed forces and the theoretical control over the prison population exercised by the courts and officials of the judiciary, the Ministry of Social Affairs, more specifically its Social Welfare Institute, is also involved in prison matters. Under the budget, three social workers and two doctors are assigned to the National Penitentiary in Port-au-Prince. No doctors are assigned to the other prisons. When the Expert visited the National Penitentiary in Port-au-Prince in early September 1991 he was told by the soldiers on guard duty that there had not been a single doctor in the past three weeks. When the Expert visited the "infirmary", he found, stretched out on the floor, a seriously ill young man who had received no medical assistance.

125. The prisons visited are in a state of ruin. In the case of the Saint Marc prison, the Expert found that minors were subject to the same prison regime as adults. Men and women, children and adults are all confined in the same spaces, generally without even minimal hygiene or ventilation. There is overcrowding. In the case of the National Penitentiary, there are metal cots with mattresses, but many other prisoners sleep on the floor. Sanitary facilities, where they do exist, are in very poor condition: open ditches overflowing with excrement, near the cells. The distribution of water is very rigid, following a schedule which does not enable prisoners to maintain a modicum of personal hygiene. The cells are infested with insects, parasites and rats.

126. The food in the jails is very poor and the prisoners rely on food brought in by relatives every day. Health conditions are precarious. At the time of the Expert's visit to the National Penitentiary in September 1991, he pointed out to the authorities the filthy state of the establishment; the army officer in charge of the prison told him that the dustbins had not been emptied in three weeks, because the truck had broken down. Rubbish had been left piled up in the central yard of the prison, malodorous and attracting a large number

of flies which invaded all parts of the prison. In Saint Marc prison, which the Expert also visited, there was not a single bed: all prisoners slept on the floor.

E. Armed forces

127. The Haitian armed forces are some 7,000 strong. Their authoritarian ideology is based on a long history of dominance in all spheres of national life. Haiti's political history is a succession of authoritarian regimes in which military leaders accumulated all real power. The power of the armed forces and the dominant features of military ideology have undergone significant changes, but have not actually diminished over the years. Some changes occurred in the 30 years of Duvalier's rule. In 1986 the armed forces again took control of the country. Under domestic and international pressure they flirted with political liberalization but, of course, they have been behind five coups d'état since then. Aware of their strength, they are at the forefront of major political decisions: they install Governments and throw them out.

128. With support from some senior officers, including General Hérard Abraham, the Provisional Government headed by Mrs. Trouillot managed to bring in the process of democratization. In his inaugural speech, President Aristide announced a reorganization of the armed forces, dismissing a number of officers in the General Staff. When General Abraham resigned, President Aristide appointed General Raoul Cedras as acting Commander-in-Chief of the Armed Forces. General Cedras had been working as the chief of the military committee to ensure law and order during the elections.

129. Although after the coup d'état on 29 September civilians were appointed to the posts of President and Prime Minister, and despite the role played since then by Parliament and some civilian organizations, the coup put real power in the hands of the military. The Expert had an opportunity to speak at length with General Raoul Cedras and the officers of his General Staff in early December 1991. The conversation made it plain that true power is exercised from the High Command: it was in General Cedras' office that Aristide signed his resignation, and almost all political instructions are issued from the same office.

F. Agrarian problem

130. There are serious land-related problems, particularly in the region of Artibonite, where conflicts have been more open and violent in view of the absolute lack of registers and ownership deeds. Most of the land has been appropriated by large landholders, through purchases, invasions, forged deeds or simply taking it by force. The Gervais massacre in Bas-Bacozelle, and the clashes in Saint-Ouens, in Haut-Bacozelle, Jean-Denis in Bas-Artibonite, Saint Michel de l'Attalaye, the central plateau of Carca-Cavajal, etc., in 1991 showed that the country had not overcome its great difficulties in this area. These are real sources of violence and even bloody conflicts between peasants and absentee landlords. Almost always, the Government Commissioner takes the side of the landowners, ordering the forces of law and order to protect their interests, and accusing the peasants of usurpation. The landowners are permitted to organize their own gangs, which, with military

help, attack the peasants, take their flocks and crops from them, beat them up, arrest them, imprison them and even kill them when they are found on land they regard as their own.

131. In spite of their ownership deeds (when they possess any), their abilities and their social right to have access to land which they can work in safety, the peasants are always the victims of this situation. The conflicts in Artibonite have been of three types: there may be, as in Piate-Délugé, two groups of owners, one urban and the other rural, each holding equally authentic deeds to a same area of land, but the town-based judicial apparatus has traditionally come down in favour of the claims of the former at the expense of the latter; or, as in Liancourt or Saint-Ouen (Haute Bacozelle), the issue may be the right to ownership of an absentee who has a deed of ownership which he invokes against the actual possession by tenant families which have worked the land for over a hundred years, as documentary evidence shows; or, as in Jean-Denis or Gervais, titles of doubtful value are brandished in order to challenge, with the connivance of the town-based military/judicial system and the support of the "section chiefs", a tradition of peasant possession where the only thing the peasants can put forward to assert their rights are the practices and customs of a culture based on the spoken word and community tradition.

132. Such injustices committed over the years by the Haitian oligarchy using oppressive agrarian structures against the peasants are heightened by the lack of a land register. The 1987 Constitution calls for the establishment of a special body, the National Institute for Agrarian Reform (INRA) to restructure the land tenure system and carry out agrarian reform to benefit the people who really work the land and to set minimum and maximum sizes for basic farming units. The Constitution recognizes and guarantees private ownership but also stipulates that persons may be deprived of the right to ownership only by the ruling of an ordinary court, except in the context of agrarian reform.

133. What really happens in this dramatic situation is constant conflict, created and maintained, as far as land ownership is concerned, by conflicting provisions stemming on the one hand from the existence of a twofold juridical system - one town-based, the other rural - simultaneously shaping the foundations of the proprietary equity; and on the other hand, the rigid functioning of the official judicial system in accordance with the preferential dictates of the town-based record office, without taking account of social practices rooted in peasant culture and tradition.

G. International obligations

134. As of December 1991, Haiti was party to the following international instruments on human rights: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery; the Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others; the Convention relating to the Status of Refugees, the Protocol on the Status of Refugees; the Convention on the

Political Rights of Women; and the International Covenant on Civil and Political Rights. Within the OAS system, Haiti is also a party to the Inter-American Convention on Human Rights.

135. The Government of President Aristide had undertaken to ratify other relevant international agreements without delay. The Minister for Foreign Affairs informed the Expert during his visit in September 1991 that the delay in ratifying those other agreements was due to the lack of a body that could study their content and advise the Government. The Expert was later informed that the ratification process would be speeded up by the establishment of the Senate's Human Rights Commission.

H. Institutional obstacles to respect for human rights

136. The first obstacle to respect and observance of human rights in Haiti lies in the traditional shortcomings of the Judiciary. Only when an independent Judiciary is ensured, free of pressure from the Executive and the military and made up of real judges, and when the structures and procedures of the law are modernized will it be possible to keep a check on the behaviour of the agents of the State in the matter of human rights.

137. A second obstacle, and one that was very obvious during the Government of President Aristide, is of a political nature. The Government showed a wish to promote the establishment of grass-roots movements with the declared object of replacing the conventional participatory institutions, such as political parties and in general the intermediate organizations that bring together various interest groups. This intention of the Government was in conflict with the Constitution and the laws. Thus an open confrontation was brought about between the partisans of representative democracy and those who, from the Lavalas movement, favoured so-called "direct" democracy. This reduced the authority of democracy and curbed freedoms and fulfilment of State pledges in regard to the promotion and respect of human rights.

138. The overriding and legitimate concern to protect and guarantee human rights as laid down in the Constitution and defined in the international instruments ratified by Haiti presupposes the organization, shaping and harmonization of an integrated system of justice comprising modern legislation, a professional police force, independent courts and a trained prison administration. The present situation is all too well known: the functions of the police and the administration of the prisons are in the hands of the armed forces, the laws are obsolete and the Judiciary is dependent and frightened.

V. SPECIAL ASPECTS OF HUMAN RIGHTS IN 1991

A. Violations of human rights in rural areas

(a) Development in the situation regarding the section chiefs

139. The Section Chiefs are the direct descendants of the landowners ("Encomenderos") of the time of the Conquest and of the Inspectors of Culture of the colonial epoch. The institution has persisted throughout the whole history of the Republic. The term "Section Chief" was coined during the

United States occupation. The chiefs used by the occupiers to control the rural population, which was considered too turbulent. The Duvalier regime with the "Tontons Macoutes" used them as an instrument to put down the rural population.

140. As already stated, most Haitians live in the rural areas: between 70 and 80 per cent of the total. The rural sectors are administered direct by the Section Chiefs, who are the sole representatives of the State in the countryside. They are responsible for maintaining order, supervising the markets, collecting taxes and coping with problems of land allocation and ownership. They have one or more assistants and are directly answerable to the commander of the military district. Normally they abuse their powers and levy various exactions on the civilian population whom they are supposed to protect. They have their own forces. The posts of section chiefs or assistants are normally shared out among the friends and associates of the military commanders and even sold or exchanged for the promise of sharing in the money and the goods which the chiefs receive from the peasants under their jurisdiction.

141. During the Government of President Aristide a decree was issued dismissing certain section chiefs and replacing them by community policemen. It was also envisaged that authority over the section chiefs would be transferred from the army to the Ministry of Justice and that in their place community section administrative councils would be organized. The change met with great resistance, since it conflicted with deeply rooted interests. General Cedras himself, during the interview with the Expert in December 1991, emphasized that the institution of section chiefs would remain part of the structure of the Haitian State.

(b) Land disputes

142. The most significant land disputes in 1991 took place in Artibonite, a region which has traditionally been the arena of conflicts between peasants and landlords or between the peasants themselves. The section chiefs are always implicated in these clashes. The disputes which had the most impact during the year were as follows:

143. Land disputes at Parc-Cheval (17 January 1991): on that day, a group of soldiers coming from Gonaves under the leadership of an officer named Renaud arrived in Parc-Cheval, a commune of Esére in Artibonite. Their object was to repudiate the ruling handed down in 1953 in favour of a certain Salim Attié against the heirs of the widow Tétard. At the same time, some civilians armed with machetes, sticks and goads, from Mapou-Lagon and Basse-Terre, invaded the locality, looted the houses and made off with the livestock. At the origin of the incident was a land dispute regarding the ownership of 208 "carrés" of land that Salim Attié had acquired from the heirs of the widow Tétard and the peasants in the area.

144. The massacre at Gervais (17 and 18 January 1991): Gervais, a commune of 2,000 inhabitants in lower Artibonite, was the scene of a dispute that caused at least 12 deaths, among them 2 assistants to the Section Chief and 1 rural official, the disappearance of 8 persons, the burning of 494 huts and the killing of cattle. Hundreds of inhabitants fled the region following this

battle between two groups of peasants who were reviving an old conflict. It seems that the soldiers from the neighbouring garrison of Saint Marc took part in the killings. Following this event, the inhabitants of the area asked the Government to try and find a final solution to the problem.

145. A land dispute at Dézil (22 April 1991): on that day in Dézil, the first community section of Petite Rivière in Artibonite, ex-Section Chief Jean-Lacoste Edouard, accompanied by 40 persons armed with machetes, goads and sticks, invaded the property of a certain Maxime Cicéron and forced him to leave. The authorities were unwilling to intervene.

146. Other land disputes: on 17 June 1991 several soldiers shot and killed two persons at Huttes Cheveaux, near Estère; on 21 June a peasant was killed in a brawl between the inhabitants of two different sections in Petite Rivière in Artibonite; a few days afterwards two people were killed at Saint Michel de l'Attalaye; on 6 September at Dézil a certain Odilon Sajous was beaten up and wounded by a group armed with machetes, sticks and revolvers. In every case the origin of the incidents was a quarrel about the ownership and use of land.

147. Faced with repeated disputes of this kind, President Aristide's Government had begun to take some measures. During his visit of September 1991, the Expert obtained information on the scope of those measures:

(a) a committee was set up to investigate the situation in the rural areas and prepare a bill on the security of property and persons in the countryside;

(b) a special body was created under the title of the National Institute of Agrarian Reform with a view to resolving the problem of land ownership and the work of the peasants;

(c) a commission was set up consisting of the Prime Minister and the Ministers of Agriculture, Economy, Trade and Industry and Justice to deal with the agrarian problem. Its specific task was to study and propose solutions for pacification of the rural areas and reaching agreements on the collection and distribution of production; and

(d) an authority for the development of the Artibonite valley (ODVA) was set up to solve the problems of production and planning the development of the region.

B. Violations of human rights in urban areas

148. Despite the fact that the democratic process had been launched in Haiti and despite the promises by President Aristide to guarantee the security of the citizens, in reality little progress was made during his mandate in the struggle against violence. Up until September 1991, the time of the coup d'état, the population was constantly threatening to take justice into its own hands, in open contempt of the laws and institutions of the State. In reality, three types of violence could be distinguished: the first was connected with police excesses (i.e. excesses by the armed forces) that sowed terror in the towns; secondly there was political violence, spontaneous or

deliberately organized, that was to be seen on the streets and took the form of demonstrations and threats of physical punishment and even of "necklacing", although the threats were more rarely put into effect; and thirdly, there was ordinary crime, which had significantly increased, particularly in the towns.

149. The situation in 1991 was marked by acts of banditry, arbitrary arrests, robberies, muggings and other crimes. There were some cases of looting of small shops and destruction of public and private offices, and the authorities had done nothing to stop them. Houses were robbed in broad daylight. The unfortunate consequence was a loss of confidence among the public in the institutions whose job it is to protect them. In most cases it was difficult to distinguish between a simple act of crime arising from hunger or poverty, the violent behaviour of the police or armed gangs, and real political crimes. However, not a day passed without cases of arbitrary arrests or murders or acts of vandalism or threats to persons and property.

150. There is no doubt that the threats and violence against political personalities were of an eminently political nature. On 14 and 15 February 1991, in the course of the debates in the recently installed National Assembly, groups of individuals engaged in intimidatory acts against the members of parliament. They insulted and made verbal attacks on, in particular, Senators Guy Beaudry, Julio Larosilière, and Robert Dupont and Deputies Serge Léger and Vénord Ancélot, threatening them with "necklacing" if they did not vote for the Executive's proposals. On the night of 7/8 August, the house of Senator Turneb Delpé, one of the spokesmen for the National Front for Change and Democracy was surrounded by armed gangs who broke the house windows with stones and damaged other property belonging to the Senator. On the next day, Senator Delpé emphasized that the attacks to which he had been subjected were due to the announcement that the Prime Minister, René Pleval, was to be summoned before Parliament. The aggressors also accused the mayor of Port-au-Prince, Evans Paul, another leader of FNCD, of wanting to destabilize the Government and they threatened him with "necklacing". On 13 August 1991, the day on which the Chamber of Deputies was to have summoned the Prime Minister, an excited mob camped outside Parliament ominously brandishing tyres and attacking two members of parliament as they entered the legislature building, one of them being Deputy Lafrance, whose clothes they tore. This violence against politicians was in the nature of blackmail. They were threatened in order to neutralize them and prevent them opposing the Government. In this way, the opposition was silenced and this, without doubt, distorted the democratic process.

C. Investigations requested from the Government by the Commission on Human Rights

151. The United Nations Commission on Human Rights, in resolutions adopted in various meetings, requested the Government of Haiti to speed up investigations of events, to take appropriate legal measures and to bring to justice those responsible in regard to the principal massacres, especially those on 29 November 1987, 11 September 1988, 12 and 16 March 1990, 31 May 1990, 21 July 1990 and 17 January 1991. With a view to responding to the Commission's concern and requests, the Haitian Government set up a Commission to investigate these and other cases of open violation of human rights that had occurred in Haiti since 1986. The Commission that was established was

assigned the task of collecting protests and complaints from the victims or their representatives about crimes and infractions committed in the course of these events, putting together all the information, questioning any witnesses and the victims themselves and submitting reports on these matters with a view to punishing the people responsible. The Commission's members were Senators Amos André and Dejean Belizaire, of the National Alliance for Democracy and Progress; Jean Robert Martinez and Eddy T. Dupiton, of the National Front for Change and Democracy; Frank Leonard, of the National Agricultural and Industrial Party; Jacques Rony Modetin, of the Movement for National Reconstruction; Julio Lavadillière, of the Union of National Progressive Democrats; Robert Opont, of the Haitian Christian Democratic Party; and Luc Fleurinor of the National Labour Party. According to the information to hand, this Commission had not concluded its investigations on any of these events before the coup d'état of 29 September.

D. Individual complaints received by the Expert during his visit to Haiti

152. During the days in September 1991 when he visited Haiti, the Expert received numerous complaints of violations of human rights from members of victims' families or directly from the victims themselves. He heard of cases of people arbitrarily imprisoned, of harassment and threats and of physical ill-treatment and torture. In particular, he received information on the following cases:

(a) On the night of 6/7 January 1991, the private residence in Port-au-Prince of Mr. Hubert de Ronceray, leader of the Movement for National Reconstruction was looted and set on fire by political opponents;

(b) Mr. Antoine Izmery was arrested and tortured and the members of his family terrorized by the military;

(c) The wives of some prisoners, among them Virginie Saint-Pierre, complained of the conditions to which their spouses were subjected in prison and the fact that they were not even able to obtain lawyers to act in their defence;

(d) In March 1991 three youths, Phillistin, Auguste and Nixon, were tortured by the military and then held, without being told why at Kenscoff Barracks, south-east of Port-au-Prince.

(e) On 26 July 1991, a police patrol shot a young man dead and then his four companions were found dead.

Once he had received this information and these complaints the Expert took advantage of his talks with ministers and military leaders to request the necessary investigations and measures in each case.

VI. THE CASE OF HAITIAN WORKERS DEPORTED FROM THE DOMINICAN REPUBLIC

A. Background

153. Haiti, a country that is overpopulated and poverty-stricken because of its small and scanty resources, has been a country of emigration since 1804. Emigration to the Dominican Republic increased substantially from 1930 onwards, when that country became one of the main sugar producers. Haitian labour, which was cheaper, was needed for the arduous work of cutting sugarcane. In a first attempt to regularize the situation of Haitian workers a treaty was signed between the two Governments in 1935. At that time about 60,000 Haitians were already working in the Dominican Republic on the sugar plantations. Although there have always been problems connected with the situation of the Haitians, both countries have tried to seek contractual regulation of those problems. Above all, the Dominican Republic needs Haitian labour, while in turn the Haitians need this work to survive.

B. Current situation

154. At the present time, thousands of Haitians take part in the Dominican sugarcane harvest every year under contract with the State Sugar Council. The conditions under which the Haitians live and the treatment to which they are subjected have given rise to various protests. Thus, the International Labour Organisation included the subject in its annual report for 1983. International concern has gone beyond the work question as such. Intergovernmental and non-governmental human rights organizations have protested against or published reports on the participation of military and police forces in the recruitment of farm workers, and the abuses committed by the authorities of the State Sugar Council during the cane harvest and at other times. The matter has been considered by the United Nations Commission on Human Rights and the Inter-American Commission on Human Rights. For their part, Americas Watch Caribbean Rights, the National Coalition for Haitian Refugees and the Comité de Abogados en Pro de los Derechos Humanos have denounced abuses and some have published reports which give an account of the ill-treatment of Haitians and lay the responsibility at the door of the Dominican authorities. These organizations, together with the ecclesiastical authorities, have sought concerted international action not only to protest against the abuses of the State Sugar Council and the passivity of the Dominican Government but also to penalize them by sending their protests to the executive or legislative commissions in the United States of America in which commercial and tariff policies in regard to Dominican export products are decided.

155. This international pressure compelled the Dominican Government to take certain measures. Thus, in October 1990 it issued Executive Decree No. 417/90, laying down certain labour human rights regulations for Haitian labourers. As a result, in April 1991 the Government of the United States extended for a further year the benefits of the general system of preferences, stating that the Dominican Government was taking practical steps to improve the conditions of cane cutters.

156. In June 1991 the problem surfaced again in the middle of an economic and employment crisis affecting Dominican society. On 11 June the

non-governmental organization Americas Watch protested to the United States House of Representatives concerning violations of the human rights of the Haitian cane cutters in the Dominican Republic, with particular reference to the regime of forced labour imposed on Haitian children in the State Sugar Council's plantations. Then, during a hearing before the House of Representatives, the Anglican priest Edwin Paraison (long-term resident of a village near San Pedro de Macoris) reported that, despite the issue of Decree No. 417/90, the situation of the cane cutters had not changed, that minors were continuing to work in cane cutting and that many of them had been brought from Haiti by fraud or in operations typical of the traffic in persons, the "press gangs" being paid 10 to 15 dollars for every young labourer recruited.

157. Scarcely two days after these accusations had been made public and the United States television channel ABC had shown pictures of the deplorable conditions in which the Haitian cane cutters were living on Dominican sugar estates, President Balaguer issued Decree No. 233/91 of 13 June 1991 ordering the repatriation of all Haitian labourers over 60 and under 16 years of age if their papers were not in order. On 18 June the Dominican Government launched an operation for massive deportation of Haitians. The number of persons deported is not known for certain. Estimates indicate that those deported as part of the Dominican Government operation number between 15,000 and 25,000, while the "voluntary returnees" (i.e. Haitians who fled for fear of being arrested or ill-treated) number about 80,000.

158. The deportations or expulsions were not restricted to those Haitians who were working on the plantations and in the sugar industry or to those over 60 or under 16 years of age, as stated in the Decree, but covered all Haitians whose papers were not in order as well as Dominicans of Haitian origin: "Arrayanos" (Dominican citizens born in the Dominican Republic, one parent being Dominican) and Dominican Haitians (Dominican citizens born of Haitian parents on Dominican territory). Even persons born of Dominican father and mother on Dominican territory were expelled.

159. According to information received during the deportations, numerous arbitrary acts occurred against Haitians and also against Dominican citizens of Haitian origin. On 17 June 1991 the Dominican Government appointed General José Ramón Mota Paulino, former chief of the National Police, as the new Director-General of Migrations. The following day the first repatriation of 29 minors occurred. They had been recruited under false pretences and had expressed a wish to return to Haiti. Nevertheless, later on, there was indiscriminate and arbitrary detention of persons of Haitian origin. Police round-ups took place both on the sugar estates and in the poor slums in the towns, especially in so-called Little Haiti in Santo Domingo, home of many people of Haitian origin.

160. The agents of the Dominican Government, particularly the police and the military, using force and threats, are arresting and herding together Haitians of every age and occupation. Those who are to be expelled are imprisoned before being taken to the Haitian frontier, where they are left with only the clothes they stand up in. Arrests occur in the streets, in the fields, on the farms and on construction sites. Some people are beaten up and generally ill-treated at the places where they are held before being deported. They have to leave behind their possessions and their entitlements (small

possessions, pensions, wages, etc.). Cases are quoted of families being separated as a result of the expulsions. Children are expelled on their own without their parents knowing anything about it. Men have been forced to leave without their wives and children. The documents that prove Dominican nationality (birth certificate, identity card or electoral card) are systematically destroyed by the authorities.

161. The Dominican Government has put forward several reasons for the massive and compulsory repatriation of Haitian citizens:

(a) It is an act of sovereignty, in the sense that every State has the right to expel any foreigner illegally on its territory;

(b) The fact that "democracy already exists in Haiti" (the reference was to the Aristide Government before the coup d'état) and therefore the Dominican Republic has no reason to receive exiles on its territory;

(c) The fact that there is an economic crisis and a great deal of unemployment in the Republic, so that the Dominican Government is obliged to look after the welfare of its own nationals in the first place, etc.

Every one of these arguments is debatable and by any reckoning contrary to the international and national standards in force.

C. Violation of internal and international norms

162. In the long run the action of the Dominican Government violates express provisions of its own legislation and of international agreements signed by the State.

163. On consideration, it violates internal laws: it violates the Dominican Constitution which in article 11 states that everyone born in the Dominican Republic is Dominican, except for the children of diplomats or people in transit. Consequently children born of Haitian father or mother on Dominican territory are Dominican, above all if the parents are not in transit but are living and working in the Dominican Republic. Their expulsion or the destruction or confiscation of documents that prove their citizenship violate the constitutional principles governing Dominican nationality. They equally violate the Dominican Civil Code, which lays down that the nationality of the parents is no bar to a child obtaining Dominican nationality. Article 7 of the Civil Code states that all persons born on the territory of the Republic, whatever the nationality of their parents, are Dominican. Expulsion from the country of people born on Dominican soil deprives them of their nationality and for that reason their expulsion is contrary to the Dominican Civil Code.

164. In the second place it violates the American Convention on Human Rights, to which the Dominican Republic is party. Mass deportation of Haitians and the expulsion of Dominicans and the destruction of their identity cards constitute a violation of article 20 and article 22, paragraphs 5, 6 and 9, of of the American Convention on Human Rights. The form the expulsions have taken violates article 8 (1) of the Convention, which clearly lays down that legal guarantees apply not only to accusations under criminal law but also to the determination of rights and obligations of any other nature. This

provision obliges the Dominican Government to look at the individual situation of those accused of violating the immigration laws, giving them the right to present their defence at a formal hearing. In the same way it violates article 25 of the Convention because of the pressure used in carrying out the deportations, those affected being deprived of any access to judicial remedy for determining whether or not they have a right to remain in the country.

165. It violates the International Covenant on Civil and Political Rights, ratified by the Dominican Republic on 4 January 1978. The measures adopted by the Government, particularly deprivation of citizenship and arbitrary mass deportations violate article 2, paragraph 1, article 12, paragraph 4, article 13 and in particular article 24, which stipulates that every child has the right to acquire a nationality. Failure to recognize as Dominican citizens children born on its territory, even though they are of Haitian parents, and deprivation of nationality by expulsion from the country are a violation of that article.

166. It violates the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the Dominican Republic on 25 May 1983. The discriminatory acts ordered by the Dominican Government and carried out by the armed forces and police and other agents against the deportees constitute a violation of article 2, paragraph 1 (a) and (b), of the Convention. It is well known that the decree gave rise to a surge of anti-Haitian violence and a form of xenophobia. The Expert himself read in the press, saw on television and on placards in the streets manifestations of xenophobia and discrimination. The Dominican Government has not condemned such acts.

167. It violates the Convention on the Rights of the Child, ratified by the Dominican Government on 2 September 1990. The measures of the Dominican Government depriving children of citizenship and separating them from their parents constitute a serious violation of the right of the child as laid down in articles 8 and 9 of the Convention.

D. Efforts to find a solution to the problem

168. As a result of these arbitrary mass deportations the Government of President Aristide had to face numerous problems to take in, lodge, register, identify and socially reintegrate the deportees. The Government took several measures in an attempt to solve the problem. In the first place it launched diplomatic negotiations with international bodies, asking for investigation and monitoring of the international commitments of the Dominican Government. It also tried to enter into discussions with the Dominican Government with a view to negotiations for guaranteeing the rights of Haitian workers, while on the home front it sought the cooperation of business groups and private associations for gradual integration of the persons repatriated.

169. On 5 July 1991 the Haitian Minister for Foreign Affairs, in a letter to the UNDP Resident Representative in Port-au-Prince, asked him to consider the possibility of providing emergency economic assistance to meet the imperative needs arising from the reception of the deportees and their reintegration into society.

170. On 12 July 1991, two members of President Aristide's Government, Marie-Michele Rey, Minister of the Economy and Finance, and Renaud Bernardin, Minister of Planning, External Cooperation and the Civil Service, consulted the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Centre for Human Rights in Geneva to inform them of the situation and ask for their good offices in overcoming the crisis. They also asked for emergency assistance to meet the needs caused by the deportation.

171. With the same object of seeking solutions to the problem, the Haitian Minister of Social Affairs, Myrtha Celestin, visited Santo Domingo on 19 August 1991 and had an interview with the Minister of Labour of the Dominican Republic, Mr. Rafael Alburquerque. The negotiations, launched through the good offices of the International Labour Office, resulted in the suspension of the deportation measures for one month; the appointment and functioning of a technical commission, with advisory help from the ILO, to study the conditions of repatriation that would respect the rights of the human person, and lastly, a check by both parties on the identity of the deportees in order to determine whether or not they were illegal migrants. Finally, in order to coordinate all the activities connected with the question of the deportees, President Aristide's Government established an executive body under the title of Inter-Institutional Commission for the Returnees, with the task of studying the situation, meeting their needs and ensuring their reintegration in society.

172. Once the coup d'état took place on 29 September, the repatriations apparently ceased and the problem of the deportees has not received any further consideration.

VII. CONCLUSIONS

173. In resolution 1991/77, the Commission on Human Rights requested the Expert to examine developments in the human rights situation in Haiti, to help devise measures capable of making the necessary improvements and to report on the discharge of his mandate to the Commission at its forty-eighth session.

174. It is well known that in the course of 1991 Haiti had three different Governments: the Provisional Government headed by Ertha Pascal Trouillot, which lasted until 7 February, when it handed over power to the President elected by the 16 December 1990 elections; the Constitutional Government headed by Jean-Bertrand Aristide, which lasted until 29 September 1991, and the de facto Government that emerged from the coup d'état of 29 September, whose future is still uncertain as it depends on the political negotiations under way. The human rights situation varied under the three Governments, as was indicated in the main part of the report. At this point, when political, economic and social developments in Haiti are uncertain, it is extremely difficult to draw final and precise conclusions. Accordingly, the conclusions set out below must be viewed as provisional. They are as follows:

(a) The popular reaction that thwarted the attempted coup d'état, headed by Roger Lafontant on 6 and 7 January 1991, was proof of the Haitian people's determination to defend their wishes as expressed in the elections of 16 December 1990;

(b) The transfer of power from the Provisional Government, headed by Mrs. Trouillot, to the Constitutional Government, elected by the Haitian people and headed by Jean-Bertrand Aristide, was a historic event without precedent in Haiti;

(c) The style adopted by President Aristide's Government and perhaps his political inexperience forced him into a difficult position which concluded with an open confrontation with other sources of power: the political parties, Parliament, the armed forces and the country's other institutions. His tendency to govern through direct democracy trangressed the nature and the principles of the 1987 Constitution, which he had sworn to obey and to enforce;

(d) During President Aristide's Government, certain measures were adopted and policies announced that were designed to improve the institutional and practical situation of human rights in Haiti: the establishment of Human Rights Commissions in Parliament, bills on the organization of the police, the elimination of the section chiefs, decentralization and agrarian reform. A number of social policies were announced, as well as investigations into previous human rights violations. Measures were announced to protect institutions and to prepare emergency programmes to assist Haitians deported from the Dominican Republic. He announced his intention of ratifying new international human rights agreements. A project was prepared to solve the problems of rural violence, and particularly the question of land ownership and occupancy, and a request was made to international agencies for technical assistance to improve the administration of justice, especially in the judicial and prison spheres. However, under his Government the main hurdles to the enjoyment of human rights were not actually removed: the judicial system remained ineffective and the prison system continued to deteriorate; traditional violence continued in rural areas, leaving a toll of deaths, insecurity and destroyed property; violence intensified in urban areas; no solution was found to the problem of the performance of police functions by the armed forces; the institution of section chiefs was not abolished in practice, no progress was made with investigations into or bringing to trial those guilty of the main massacres in rural and urban areas. In other words, little progress was made in this regard, despite the Government's avowed intention to achieve significant change and progress.

(e) Perhaps the greatest shortcoming of President Aristide's Government in the human rights field has been precisely its interpretation and understanding of the working of the democratic system. Mass violence leads to irrational action and even irrational crime. Freedom of thought, to criticize, to act in accordance with one's own ideas and opinions are fundamental human rights that may be suspended only in specific circumstances of emergency or danger;

(f) During the events of 29/30 September and afterwards, serious human rights violations were committed under the de facto Government, and the situation has worsened still further. Violations of fundamental rights occur virtually every day, under the prevailing climate of terror. There are regular reports of persons being persecuted, harassed, detained without due process of law, tortured, persons who disappear and are murdered. This occurs both in Haiti's capital and in the towns and villages in the interior.

Reports have been received that both military patrols and civilian patrols in the pay of the armed forces open fire in the streets on real or potential demonstrators, particularly at nightfall in the poorest districts; they threaten the population, surround churches, prevent the emergency services from evacuating the wounded and shoot down civilians, as part of a plan to avert demonstrations through preventive repression. The climate of insecurity and fear prevailing in the capital has forced many people to seek refuge in rural areas. It is estimated that at least 300,000 people have fled from Port-au-Prince and sought refuge in the countryside. Many other people have attempted to flee abroad in small boats. Despite efforts by human rights organizations to establish figures, there is no reliable information on the number of persons killed and wounded by the military's repressive measures. The Inter-American Commission on Human Rights estimated the number of dead by mid-November at 1,500. The existence of mass graves has been reported. There have also been numerous unlawful arrests, the principal victims being the civilian and administrative personnel of President Aristide, political and trade union leaders, journalists, teachers, artists and students. A large but unspecified number of people have been arrested without a warrant in the repressive measures in the poor districts of Port-au-Prince and of other towns. Complaints have also been made about cases of torture and ill-treatment of prisoners. It has been reported that some of the methods of torture used in the prisons and interrogation centres have caused serious physical and mental injury to the victims. Many people have been searched without a warrant and their homes entered unlawfully. This crime is committed against anyone suspected of supporting President Aristide, particularly priests and nuns. Most private radio stations are still off the air and others, as well as the television station, have stopped broadcasting news, out of fear and because of the threats made by the army. By the end of November 1991, of the nine radio stations operating in Port-au-Prince only three were still broadcasting: Radio Nationale, owned by the Government, Radio Tropique and Radio Galaxie. All the radio stations in Cap Haitien and Jérémie stopped broadcasting because of the threats and the attacks against them. The equipment in some stations was destroyed or seriously damaged; the press cards of some journalists have been confiscated, and other journalists have been detained, including Miché Sully of Radio Galaxie, Jean-Robert Philippe, a former contributor to Radio Nationale and a correspondent of the Voice of America, and Fernand Balan, of Radio Soleil, whose whereabouts in detention are still unknown. The independent press has virtually ceased to operate on account of the threats against journalists. Attempts by students, teachers and other grass-roots and trade union organizations to organize demonstrations in support of President Aristide have been violently put down. Any demonstration is dispersed and followed by house searches, arrests and physical punishment. The Government thus maintains a semblance of peace on the streets, which is doubtless the result of the terror sown among the population.

(g) The future of human rights and fundamental freedoms in Haiti will depend on a number of factors: a solution to the political crisis stemming from the coup d'état of 29 September, on which the legitimacy of the Government and its national and international recognition in turn depend; the solutions to institutional problems, such as the inefficiency of the administration of justice, the absence of a police force distinct from the armed forces, the modernization of civil and criminal legislation, the

replacement of outdated institutions such as the section chiefs by legitimate authorities imbued with democratic authority and a democratic vocation; the development of a democratic culture in all sectors of Haitian society and the solutions to the most serious economic, social and cultural problems, such as production, employment, food, services education, transport, health and sanitation. For the time being, human rights come up against all these obstacles, which in turn hamper the development of democratic institutions, of political stability and of freedom.

VIII. RECOMMENDATIONS

175. The Expert would like to make the following recommendations to the Commission:

(a) The Commission, while welcoming the investiture of the first civilian and constitutional Government elected by a broad popular ballot, should express its regret at, and condemn the coup d'état on 29 September which overthrew the Constitutional Government of President Jean-Bertrand Aristide;

(b) The Commission should continue to examine and to monitor the human rights situation in Haiti in order to record and denounce violations, to demand that the Government comply with its international and constitutional commitments, to help solve the serious problems affecting human rights and to inform Governments and the various United Nations bodies of the human rights situation in Haiti;

(c) The Commission should expressly demand that the Government of Haiti comply with the commitments entered into by Haiti when it ratified the International Covenant on Civil and Political Rights and other international human rights instruments;

(d) The Commission should request the Government of Haiti to fulfil its promises to implement the programmes announced to improve the administration of justice and the prison system, to modernize civil and criminal legislation, to separate the police from the armed forces, to investige crimes committed by the authorities in violation of human rights, to implement the 1987 Constitution fully and to restore completely the State governed by the rule of law that was overthrown by the coup d'état on 29 September;

(e) The Commission should request international agencies to provide Haiti, when domestic and international circumstances allow, with the necessary technical and financial assistance to develop the institutions and programmes to which improvement of the human rights situation in Haiti is linked;

(f) In view of the serious and extremely difficult human rights situation in Haiti, whose causes and manifold developments are explained in the main body of the report, the Commission should decide to appoint a Special Rapporteur to study and periodically report to the Commission on the human rights situation in Haiti;

(g) At the request of the Government, and when national and international circumstances allow, the Centre for Human Rights should provide Haiti with a human rights specialist permanently based at the office of the United Nations Development Programme in Port-au-Prince, to follow up the human rights situation in Haiti, to ensure coordination with the Special Rapporteur and to coordinate such assistance as the Centre for Human Rights may provide to Haiti; to encourage ratification of the main human rights treaties to which Haiti is still not a party and to advise the authorities on measures designed to enhance independent national institutions for the protection and promotion of human rights in Haiti.

176. These are the recommendations submitted by the Expert under the mandate assigned to him by the Commission. The Expert is convinced of the need to continue scrupulously to monitor the political, social and economic situation in Haiti, where, at the time of completing this report, and in spite of the efforts made, especially by the inter-American system, the political situation remains confused, with the consequent threat to the human rights and fundamental freedoms of the Haitian people.